

Amended and Restated Master Power Purchase & Sale Agreement

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AMENDED & RESTATED MASTER POWER PURCHASE AND SALE AGREEMENT
TABLE OF CONTENTS

TABLE OF CONTENTS I

GENERAL TERMS AND CONDITIONS	1
ARTICLE ONE: GENERAL DEFINITIONS	1
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	11
2.1 Transactions	11
2.2 Governing Terms	11
2.3 Recording	11
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	12
3.1 Seller's and Buyer's Obligations	12
3.2 Transmission and Scheduling	12
3.3 Force Majeure	18
3.4 Reserved	19
3.5 No Immunity Claim	19
3.6 Payments Under Agreement an Operating Expense	19
3.7 Rate Covenant; No Impairment	19
3.8 No More Favorable Terms	19
3.9 Sources of Payment; No Debt of State	19
3.10 Application of Government Code and the Public Contracts Code	20
3.11 Governmental Approvals	20
ARTICLE FOUR: RESERVED	20
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	20
5.1 Events of Default	20
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	21
5.3 Termination Payment Calculations	21
5.4 Suspension of Performance	22
5.5 Other Termination/Suspension Provisions	23
5.6 Failure To Deliver Energy	23
ARTICLE SIX: PAYMENT AND NETTING	24
6.1 Billing Period	24
6.2 Basis of Invoice	24
6.3 Timeliness of Payment	24
6.4 Disputes and Adjustments of Invoices	25
6.5 Netting of Payments	25
6.6 Payment Obligation Absent Netting	25
ARTICLE SEVEN: LIMITATIONS	25
ARTICLE EIGHT: SECURITY	26
8.1 Seller Collateral Requirements	26
ARTICLE NINE: GOVERNMENTAL CHARGES	28
9.1 Cooperation	28
9.2 Governmental Charges	28

ARTICLE TEN: MISCELLANEOUS	28
10.1 Term of Master Agreement	28
10.2 Representations and Warranties	29
10.3 Title and Risk of Loss	30
10.4 Reserved	30
10.5 Assignment	31
10.6 Governing Law	31
10.7 Notices	31
10.8 General	32
10.9 Audit	32
10.10 Confidentiality. Not applicable	33
10.11 No Retail Services; No Agency	33
10.12 Dispute Resolution	33
10.13 No Rate Change Applications	33
10.14 Meet and Confer	33
10.15 Novation	34
 GATES TRANSACTION 1	
A. Description of Facilities	1
B. Contract Quantity	1
C. Commercial Operation Date	1
D. Availability	1
E. Capacity Payment	4
F. Guaranteed Starting Reliability Adjustment (“GSRA”)	4
G. Delivery Point(s) and Interconnections	5
H. Energy Price	5
I. Guaranteed Heat Rate (“GHR”)	6
J. Variable O&M Payments	6
K. Start-up Payment	6
L. Start Fuel Price (“SFP”)	7
M. Fuel Cost and Fuel Supply	7
N. Total Monthly Payment	11
O. Emissions and Operations	12
P. Unit’s Operating Limits	12
Q. [Reserved]	13
R. Operations Committee; Operating Procedures	13
S. Metering	13
T. Records	15

**AMENDED AND RESTATED
MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET**

This *Amended and Restated Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00)* ("Master Agreement") is made as of the following date: December 17, 2002 ("Effective Date"). The *Master Agreement*, together with the Gates Transaction, and any exhibits, schedules and any other written supplements hereto, shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("Wellhead Power Gates, LLC ", formerly known as "Wellhead Power, L.L.C.", or "Party A")

Name (California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the "State Water Resources Development System" or "Party B")

All Notices: Wellhead Power Gates, LLC

All Notices: California Department of Water Resources

Street: 650 Bercut Drive, Suite C

Street: 1416 Ninth Street

City: Sacramento, California Zip: 95814

City: Sacramento, California Zip: 95814

Attn: Controller (for Invoices, Payments & Credit and Collections)

Attn: Executive Manager Power Systems

Phone: (916) 447-5171

Phone: (916) 653-5913

Facsimile: (916) 447-7602

Facsimile: (916) 653-0267

Duns: _____

Duns: _____

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn: Contracts Payable

Phone:

Phone: (916) 653-6404

Facsimile:

Facsimile: (916) 654-9882

Scheduling:

Scheduling:

Attn: Kenneth Salvagno

Attn: Chief Water and Power Dispatcher

Phone: (916) 447-5171

Phone: (916) 574-2693

Facsimile: (916) 447-7602

Facsimile: (916) 574-2569

Payments:

Payments:

Attn:

Attn: Cash Receipts Section

Phone:

Phone: (916) 653-6892

Facsimile:

Facsimile: (916) 654-9882

Wire Transfer:

Wire Transfer:

BNK: Bank of America

BNK: Bank of America (Sacramento Main Branch)

ABA:

ABA: Routing #

ACCT:

ACCT: #

Credit and Collections:

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default to:

Attn: Harold E. Dittmer
Attn:
Phone: (916)-447-5171
Facsimile: (916)-447-7602

With additional Notices of an Event of Default to:

Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff <u>N/A</u>	Dated _____	Docket Number _____
Party B Tariff	Tariff <u>N/A</u>	Dated _____	Docket Number _____

Article Two

Transaction Terms and Conditions ☐ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

<input type="checkbox"/> Cross Default for Party A:	
<input type="checkbox"/> Party A: _____	Cross Default Amount \$ _____
<input type="checkbox"/> Other Entity: _____	Cross Default Amount \$ _____
<input type="checkbox"/> Cross Default for Party B:	
<input type="checkbox"/> Party B: _____	Cross Default Amount \$ _____
<input type="checkbox"/> Other Entity: _____	Cross Default Amount \$ _____

5.6 Closeout Setoff

- ☐ Option A (Applicable if no other selection is made.)
- ☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- ☐ Option C (No Setoff)
- ☒ Not Applicable (Section revised)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: _____

☒ Option C Specify: annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise such sellers of the financial condition of the Fund.

☐ Not Applicable

(b) Credit Assurances:

☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify: _____
☒ Option C Specify: Annual audited financial statements and annual budget of Party A
☐ Not Applicable

(b) Credit Assurances:

- ☐ Not Applicable
☒ Applicable - See Sec. 8.1

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:
Specify: _____

(e) Guarantor for Party A:

Guarantee Amount:

Article 10

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

Not Applicable -- all provisions in text

☐ Party A is a Governmental Entity.

☐ Party B is a Governmental Entity.

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

Schedule P

Not Applicable -- all provisions in text

Other Changes

Specify, if any: See attachment.

This Amended and Restated Master Power Purchase and Sale Agreement amends and supercedes that certain Master Power Purchase Agreement dated August 14, 2001 (the "Prior Agreement") by and between Wellhead Power, L.L.C. and California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System. As of the Effective Date of this Amended and Restated Master Power Purchase and Sale Agreement, the Prior Agreements, together with any Transaction thereunder, shall be of no force or effect.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Wellhead Power Gates, LLC

California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: The Master Power Purchase and Sale Agreement, upon which portions of this agreement are based, was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1. “Act” means Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the California Water Code, as amended.
- 1.2. “Actual Availability Factor” or “AAF” has the meaning set forth in Section D.3 of the Gates Transaction.
- 1.3. “Actual Starting Reliability Factor” or “ASRF” has the meaning set forth in Section F of the Gates Transaction.
- 1.4. “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.5. “Agreement” has the meaning set forth in the Cover Sheet.
- 1.6. “Actual Heat Rate” or “AHR” has the meaning set forth in Section I.2(a) of the Gates Transaction.
- 1.7. “AHR Hours” has the meaning set forth in Section I.2(a) of the Gates Transaction.
- 1.8. “Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, operating reserve-spinning and operating reserve-supplemental. Ancillary Services does not include imbalance energy.
- 1.9. “Annual Dispatch Plan” has the meaning set forth in Section 3.2(c).
- 1.10. “Approved Fuel Plan” is described in Section M.8 of the Gates Transaction.
- 1.11. “Availability Adjustment” or “AA” has the meaning set forth in Section D.3 of the Gates Transaction.
- 1.12. “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent

(however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

- 1.13. “Bonds” means the bonds offered by Seller pursuant to the Act, with recourse only to the Trust Estate and shall include any financing pursuant to Executive Order D-42-01 and a Credit and Security Agreement, dated as of June 26, 2001, by and among Seller, various lenders and Morgan Guaranty Trust Company of New York, as agent on behalf of such lenders.
- 1.14. “Burner Tip Gas Price” or “BTGP” has the meaning set forth in Section M.3 of the Gates Transaction.
- 1.15. “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.
- 1.16. “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction. For the Gates Transaction, Buyer is Party B.
- 1.17. “CAISO” means the California Independent System Operator Corporation, or any successor entity thereto, that oversees and administers those portions of the California transmission system assigned to its control and that provides non-discriminatory transmission services within the area recognized as the “CAISO Controlled Grid” pursuant to a FERC-approved tariff.
- 1.18. “CAISO Charges” has the meaning set forth in Section 3.2(m) hereof.
- 1.19. “CAISO Requirements” means the applicable rules and regulations as defined and set forth in CAISO’s FERC-approved tariff with associated protocols and operating procedures, CAISO Participating Generator Agreement, CAISO Meter Services Agreement for ISO Metered Entities, Scheduling Coordinator Agreement, and/or similar agreements, policies and guidelines adopted by the CAISO pursuant to its FERC-approved tariff.
- 1.20. “CAISO Schedule Adjustments” means adjustments that CAISO imposes on the preferred day-ahead schedule during the CAISO day-ahead scheduling process or preferred hour-ahead schedule during the CAISO hour-ahead scheduling process.
- 1.21. “Capacity” means the continuous demand-carrying ability for which the Unit is rated pursuant to this Agreement.
- 1.22. “Capacity Payment” has the meaning set forth in Section E of the Gates Transaction.

- 1.23. “Claiming Party” has the meaning set forth in Section 3.3.
- 1.24. “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, reasonable attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.25. “Commercial Operation Date” or “COD” has the meaning set forth in Section C of the Gates Transaction.
- 1.26. “Contract Price” means the price in \$U.S. to be paid by Buyer to Seller for the purchase of the Product pursuant to all the terms of this Agreement, as generally summarized in Section N of the Gates Transaction.
- 1.27. “Contract Quantity” has the meaning set forth in Section B of the Gates Transaction.
- 1.28. “Curtailed Event(s)” with respect to the Unit, are those circumstances or events then impacting the Unit for which Seller is excused from its contractual obligation to make deliveries from the Unit to Buyer, or to provide for the dispatch, Scheduling and operation of the Unit, due to one or more of the following reasons: (a) transmission at or immediately downstream of the Energy Delivery Point is interrupted, curtailed or unavailable; (b) transportation, distribution, storage or other delivery services of natural gas to the Facilities upstream of the Gas Receipt Point is interrupted, curtailed or unavailable provided that, such occurrence will not be a Curtailed Event if Seller, pursuant to an Approved Fuel Plan, has made arrangements for such transportation, distribution, storage or other delivery services that are characterized as “firm” or “non-interruptible” and such interruption, curtailment or unavailability is due to Seller’s negligence in administering such arrangements; (c) natural gas supply is interrupted, curtailed or unavailable provided that, such occurrence will not be a Curtailed Event if Seller, pursuant to an Approved Fuel Plan, has made arrangements for such supply that are characterized as “firm” or “non-interruptible” and such interruption, curtailment or unavailability is due to Seller’s negligence in administering such arrangements; (d) a failure to deliver Energy in response to a schedule which is inconsistent with the Unit’s Operating Limits or not timely made in accordance with Section 3.2; and (e) reductions to Buyer’s schedules directed by the CAISO.
- 1.29. “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.
- 1.30. “Day-Ahead Effective Energy Schedule” has the meaning set forth in Section 3.2(d)(2).

- 1.31. “Day-Ahead Physical Energy Schedule” has the meaning set forth in Section 3.2(d)(2).
- 1.32. “Default Fuel Price” has the meaning set forth in Section M.8(i) of the Gates Transaction.
- 1.33. “Delivery Period” has the meaning set forth in the Gates Transaction.
- 1.34. “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.35. “Dispatchability Notice” has the meaning set forth in Section D.2 of the Gates Transaction.
- 1.36. “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.37. “Effective Date” has the meaning set forth on the Cover Sheet.
- 1.38. “Effective Energy Schedule” is the product of the Physical Energy Schedule and the GMM pursuant to the CAISO Requirements.
- 1.39. “Electric Metering Equipment” means electric meters and associated equipment including, without limitation, metering transformers and meters for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of Energy or Ancillary Services produced by the operation of the Unit.
- 1.40. “Energy” means the electrical energy produced, flowing or supplied by the Unit, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiples thereof, *e.g.*, 1,000 Wh=1kWh, 1,000 kWh=1 MWh, etc.
- 1.41. “Energy Delivery Point” (“EDP”) means the point at which the Product will be delivered and received, as specified in Section G of the Gates Transaction.
- 1.42. “Energy Price” means the compensation due Seller for fuel used in the operation of the Unit as set forth in Section H of the Gates Transaction.
- 1.43. “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44. “Event of Default” has the meaning set forth in Section 5.1.
- 1.45. “Excused Outage” with respect to the Unit, is all or that portion of an outage or derating of the Unit for which Seller is excused from its contractual obligation to deliver Energy or make the Unit available to Buyer for Scheduling and operation for one or more of the following reasons: (a) Force Majeure; and (b) two weeks of scheduled maintenance per year, not to occur during the months of July, August, or September.

- 1.46. "Expected Dispatchable Quantity" or "EDQ" is the Unit's truncated NDDC corresponding to the expected ambient conditions as forecasted at the time of the applicable Dispatchability Notice for those identified hours when the Unit is potentially subject to Scheduling; provided, however, that in the event technical considerations would decrease expected Unit output in any hour below 100% of the applicable NDDC, then the EDQ for such hour shall be reduced to reflect such decreased expected output.
- 1.47. "FERC" means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48. "Final Effective Energy Schedule" has the meaning set forth in Section 3.2(d)(2) hereof.
- 1.49. "Final Physical Energy Schedule" for an hour is the Physical Energy Schedule that exists at the close of the CAISO scheduling processes, as further defined in Section 3.2(d)(2).
- 1.50. "Fixed Fuel Charge" has the meaning set forth in Section M of the Gates Transaction.
- 1.51. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not reasonably foreseeable as of the date the Transaction was agreed to (based on facts or circumstances actually known to such Party as of the date the Transaction was agreed to), which is not within the reasonable control of, or the result of the negligence of, the claiming party, and which, by the exercise of due diligence, the claiming party is unable to overcome or avoid or cause to be avoided through the exercise of reasonable means, including, but not limited to: shortages of materials or supplies (except if caused by Seller's failure to maintain sufficient inventories and stores of spare parts), strikes or labor disruptions (except strikes or labor disputes resulting in a finding of unsafe working conditions by Seller or unfair labor practices by Seller), interruptions or curtailment of fuel supply or fuel transportation, distribution or storage, water supply or transmission, drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to obtain and maintain applicable governmental approvals from a governmental authority resulting solely from the enactment, repeal or amendment of any applicable law or in the interpretation or application of any applicable law by such governmental authority, in each case occurring after the effective date hereof, or the failure of such governmental authority to comply with statutorily mandated permitting time requirements. Notwithstanding anything hereinto the contrary, Force Majeure does not include any permit-related matters prior to COD for any applicable Unit. Force Majeure shall not include any events such as, but not limited to, events arising from the failure to operate and maintain the Project in accordance with Prudent Utility Practice; economic factors including the price of gas or gas transmission; curtailment of interruptible gas transportation if Seller, pursuant to an Approved Fuel Plan, has made arrangements for such supply that are characterized as "firm" or "non-interruptible" and such interruption, curtailment or unavailability is due to Seller's negligence in administering such arrangements; the cost of variable and fixed operation and maintenance costs; events that merely increase the cost of a Party's performance; failure

of third parties to provide goods or services essential to a Party's performance except to the extent caused by an Force Majeure event; or the inability of a Party to obtain financing.

- 1.52. "Fund" and "Special Fund" means the California Department of Water Resources Electric Power Fund in the California State Treasury established by Section 80200 of the California Water Code.
- 1.53. "Gas Metering Equipment" means the Utility's Gas Metering Equipment.
- 1.54. "Gas Receipt Point" means the point of interconnection between the Unit's fuel system and the Natural Gas LDC's fuel delivery system pursuant to those gas transportation tariffs or interconnection agreement, as applicable, between Seller and the Natural Gas LDC.
- 1.55. "GMM" means the Generation Meter Multiplier, or an appropriate successor factor, used by CAISO to adjust energy deliveries from the Unit for system losses.
- 1.56. "Governmental Entity" means the State of California Department of Water Resources separate and apart from its power and responsibilities with respect to the State Water Resources Development System.
- 1.57. "Guaranteed Availability Factor" or "GAF" has the meaning set forth in Section D.3 of the Gates Transaction.
- 1.58. "Guaranteed Heat Rate" or "GHR" has the meaning set forth in Section I.1 of the Gates Transaction.
- 1.59. "Guaranteed Starting Reliability Factor" or "GSRF" has the meaning set forth in Section F of the Gates Transaction.
- 1.60. "Guaranteed Starting Reliability Adjustment" or "GSRA" has the meaning set forth in Section F of the Gates Transaction.
- 1.61. "Hourly Unit Availability" has the meaning set forth in Section D.3 of the Gates Transaction.
- 1.62. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63. "IOU Administrative Transfer Date" means the date on which the administrative and operational control of the Agreement is transferred from California Department of Water Resources to an investor-owned utility.

- 1.64. "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
- 1.65. "Market Value" shall have the meaning set forth in Section 5.3.
- 1.66. "Master Agreement" has the meaning set forth on the Cover Sheet.
- 1.67. "Monthly Capacity Adjustment" or "MCA" has the meaning set forth in Section N.1.
- 1.68. "Moody's" means Moody's Investor Services, Inc. or its successor.
- 1.69. "Natural Gas LDC" shall mean the entity providing natural gas local distribution transportation service to the Unit, which currently will be Pacific Gas And Electric Company.
- 1.70. "NERC" means the North American Electric Reliability Council or any successor organization thereto.
- 1.71. "Net Demonstrated Capacity" or "NDC" is the Capacity of the Unit, net of auxiliary plant loads, transformer losses and transmission losses, if any, and actually measured in megawatts at the Energy Delivery Point pursuant to the four-hour demonstration test required under Section B.2 of the Gates Transaction, during which there were no equipment, operating or regulatory restrictions and adjusted to Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Gates Transaction.
- 1.72. "Net Demonstrated Dependable Capacity" or "NDDC" is the NDC adjusted for differences, if any, between ambient conditions and Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Gates Transaction. Conversely, NDDC at Site Standard Conditions equals NDC.
- 1.73. "Net Guaranteed Capacity" or "NGC" is the capacity of the Unit, net of auxiliary plant loads, transformer losses and transmission line losses, if any, and stated in megawatts at the Energy Delivery Point at Site Standard Conditions, which Seller guarantees that upon the Commercial Operation Date can be sustained by the Unit for four continuous hours if there are no equipment, operating or regulatory restrictions.
- 1.74. "Net Guaranteed Dependable Capacity" or "NGDC" is the NGC adjusted for differences, if any, between ambient conditions and Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Gates Transaction. Conversely, NGDC at Site Standard Conditions equals NGC.

- 1.75. “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.76. “Operations Committee” has the meaning set forth in Section R of the Gates Transaction.
- 1.77. “Operating Procedures” has the meaning set forth in Section R of the Gates Transaction.
- 1.78. “Operating Limits” has the meaning set forth in Section P of the Gates Transaction.
- 1.79. “Gates Transaction” means the Transaction described in the attached Attachment 1 to Exhibit A dated December 17, 2002.
- 1.80. “Per Unit Market Price” means the applicable price per MWh of energy and/or per MW of capacity determined in accordance with Section 5.3.
- 1.81. “Physical Energy Schedules” means the quantity of Energy Scheduled to and from the Energy Delivery Point in MWh unadjusted by any Energy loss factors.
- 1.82. “Preliminary Variable Fuel Cost” has the meaning set forth in Section M of the Gates Transaction.
- 1.83. “Preliminary Hourly Variable Fuel Cost” has the meaning set forth in Section M of the Gates Transaction.
- 1.84. “Present Value Rate” shall mean the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement.
- 1.85. “Product” means electric Capacity, Energy or other product(s) related thereto as specified in the Gates Transaction.
- 1.86. “Project Financing” means such financing undertaken by Seller in connection with development and completion of the project, and any renewal, modification, extension or replacement of such financing set forth in Section 8.1(a)(ii) hereof.
- 1.87. “Prudent Utility Practice” means those practices, methods and procedures, as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate, and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area to the extent such practices are not specified by CAISO Requirements.

- 1.88. “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Agreement. Quantity shall equal the Final Physical Energy Schedule(s).
- 1.89. “Recording” has the meaning set forth in Section 2.3.
- 1.90. “Reference Market-maker” means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody’s.
- 1.91. “Regulatory Event” has the meaning set forth in Section 10.8 hereof.
- 1.92. “Replacement Agreement” means any agreement identical to this Agreement excluding provisions relating to Department’s status as a governmental agency or to the original start date(s) of this Agreement, including but not limited to Sections 3.5, 3.6, 3.7, 3.8, 3.9, and 3.10, and those portions of Sections 3.2(d) and (e) relating to rights that expire on the IOU Administrative Transfer Date, together with such additional changes as Seller and Qualified Electric Corporation shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.
- 1.93. “Replacement Contract” means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Energy Delivery Point and Product to be provided under this Agreement.
- 1.94. “Reservation” has the meaning set forth in Section 3.2(d).
- 1.95. “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.96. “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Scheduling Coordinators and Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be reserved or delivered on any given day or days during the Delivery Period at a specified Energy Delivery Point.
- 1.97. “Scheduling Coordinator” means an entity, as defined from time to time by the CAISO, which as of the date hereof is defined by the CAISO as an entity certified by the CAISO for the purposes of undertaking the functions currently specified in Section 2.2.6 of the FERC-approved CAISO Electric Tariff.
- 1.98. “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction. For the Gates Transaction, Seller is Party A.

- 1.99. "Site" has the meaning set forth in Section A of the Gates Transaction.
- 1.100. "Site Standard Conditions" means presumed operational conditions of 59° Fahrenheit and 60% relative humidity at the Site elevation as stated in Section A of the Gates Transaction.
- 1.101. "Suspend" or "Suspension" means that from the Suspension Date until the date the Party suspending the Agreement designates, all obligations of each Party are excused, including without limitation all obligations with respect to the accrual of payments or hours of non-availability, and obligations to buy, sell, Schedule or deliver Energy, provided however any and all obligations to invoice and pay amounts accrued with respect to performance occurring before the Suspension Date shall not be excused.
- 1.102. "Suspension Date" has the meaning set forth in Section 5.4.
- 1.103. "Terminated Transaction" has the meaning set forth in Section 5.2.
- 1.104. "Termination Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these costs.
- 1.105. "Termination Payment" has the meaning set forth in Section 5.2.
- 1.106. "Transaction" means the particular transaction known as the Gates Transaction as agreed to by the Parties relating to the sale and purchase of Product pursuant to this Master Agreement.
- 1.107. "Transmission Provider" means the CAISO or any entity or entities with whom the Parties Schedule delivery of the Product at the Energy Delivery Point in a particular Transaction.
- 1.108. "Trust Estate" means all revenues under any obligation entered into, and rights to receive same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.
- 1.109. "Unadjusted Metered Energy" means the Unit's actual physical Energy production (in MWh) as measured by the Electric Metering Equipment and in accordance with CAISO Requirements unadjusted by any Energy loss factors.

- 1.110. “Unit” means the individual electric generator and its associated plant and apparatus whose electrical output is capable of being separately identified and metered, a description of which is set forth in Section A of the Gates Transaction.
- 1.111. “Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from the generation asset or assets specified in the Transaction pursuant to the availability and delivery obligations set forth in Section 3.1 of this Agreement.
- 1.112. “Unit’s Operating Limits” has the meaning set forth in Section P of the Gates Transaction and tables, schedules or exhibits set forth or provided thereto.
- 1.113. “Utility’s Gas Metering Equipment” means natural gas meters and associated equipment, including check meters, if any, utilized in determining the amount of natural gas delivered by the Natural Gas LDC to the Unit.
- 1.114. “Variable Fuel Cost” has the meaning set forth in Section M of the Gates Transaction.
- 1.115. “Variable O&M Payment” has the meaning set forth in Section J of the Gates Transaction.
- 1.116. “Variable O&M Rate” is as provided in Section J of the Gates Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions.

The Parties are entering into the Gates Transaction pursuant to the terms and conditions of this Agreement.

2.2 Governing Terms.

Unless otherwise specifically agreed, the Gates Transaction between the Parties shall be governed by this Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support, guarantee or similar arrangement between the Parties and the Gates Transaction shall form a single integrated and stand-alone agreement between the Parties and accordingly, (i) provisions in the Agreement referring to offsetting or netting multiple transactions relating to any other transactions entered into by the Parties shall not be applicable to the Gates Transaction and (ii) an Event of Default or Potential Event of Default with respect to any transaction other than the Gates Transaction shall not affect the Gates Transaction.

2.3 Recording.

Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and

that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a confirmation is not fully executed (or deemed accepted) by both Parties.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

With respect to the Gates Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall receive, or cause to be received, the Quantity of the Product at the Energy Delivery Point, and Buyer shall pay Seller the Contract Price. Seller shall have no obligation to deliver the Product during an outage or Curtailment Event, and Seller shall have no obligation to make the Unit available during an Excused Outage. Seller shall deliver the Product exclusively from the Unit, with the exception of the use of CAISO imbalance energy as provided for hereunder. Seller shall be responsible for any costs or charges associated with the Product or its Scheduling or delivery up to the Energy Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its Scheduling or receipt at and from the Energy Delivery Point.

3.2 Transmission and Scheduling.

- (a) Seller shall arrange and be responsible for transmission service to the Energy Delivery Point, if any, and shall obtain Scheduling Coordinator services necessary to deliver the Product to the Energy Delivery Point. Except as provided for in Section 3.2(e) below, Seller shall be responsible for all charges due to the CAISO, and entitled to receive all payments from the CAISO, related to deviations of Unadjusted Metered Energy from the Final Physical Energy Schedule for the Unit (inclusive of charges for imbalance Energy and replacement reserves). Buyer shall arrange and be responsible for transmission service at and from the Energy Delivery Point. Buyer shall arrange for and be solely responsible for any Ancillary Services necessary to support its purchase, transmission and use of the Product.
- (b) Buyer shall have the right to dispatch the Unit only during hour ending 0700 through hour ending 2300 on all weekdays and Saturday.
- (c) During the term of this Agreement, Buyer shall provide Seller, no later than April 1 each year, its forecast of the amount and timing of the Product it will require each day of the twelve (12) month period commencing July 1 ("Annual Dispatch Plan"). No later than ten (10) business days after the Effective Date and thereafter no later than the first day of each month, Buyer shall deliver to Seller its forecast of the amount of Product it will require for

each hour of each day of the following month (“Monthly Dispatch Plan”). No later than noon on the Friday before each week, commencing on the Friday prior to the scheduled COD, Buyer shall deliver to Seller an update of its forecast of the amount of MWh it will require for each hour of each day of the following week (“Weekly Dispatch Plan”). The Annual Dispatch Plan, Monthly Dispatch Plan and Weekly Dispatch Plan shall be non-binding except as the Annual Dispatch Plan is applied with respect to the Approved Fuel Plan.

- (d) (1) Buyer may (i) Schedule with Seller the Unit into the CAISO Day Ahead market, pursuant to the protocols hereunder for establishing a Physical Energy Schedule, (ii) Schedule with Seller a reservation of the Unit at zero (0) MWh (a “Reservation”) for any or all hours to which it is entitled in order to enable Buyer to make use of its rights hereunder to make same day schedule changes or real-time dispatch instructions (which rights shall terminate on the IOU Administrative Transfer Date), and (iii), in the case of emergencies (as declared by CAISO or, prior to the IOU Administrative Transfer Date, as verifiable extraordinary circumstances wherein any of Buyer’s other dedicated or Unit Firm Energy resources become unavailable) Schedule with Seller the Unit into the CAISO Hour Ahead market without any prior day-ahead Physical Energy Schedule or Reservation. In all cases, for the period prior to the IOU Administrative Transfer Date, Buyer may request same day schedule changes to any Physical Energy Schedule or Reservation.

(2) No later than the earlier of one hour before the latest time by which Seller must (a) convey any of its natural gas transportation and supply nominations to its natural gas transporter(s) or supplier(s) for service necessary to meet Buyer’s preferred Energy schedules for the CAISO day-ahead scheduling process or (b) convey its preferred Energy schedules to its Scheduling Coordinator for CAISO’s day-ahead scheduling process, but in no event prior to 6:15 a.m. on the day preceding the applicable power deliveries, Buyer shall (i) Schedule with Seller with respect to the Unit, stated as a Physical Energy Schedule, the hours Seller is to submit to the CAISO as the day-ahead preferred schedule for CAISO scheduling of the Unit to produce Physical Energy Schedules that Buyer will purchase during such hour(s) of the following day, or (ii) only during the period prior to the IOU Administrative Transfer Date, Schedule a Reservation of the Unit with Seller. Seller shall submit or cause to be submitted to the CAISO in its preferred schedule the delivery of the Product to Buyer as Effective Energy Schedules and Buyer shall accept such schedule. Seller shall inform Buyer of any CAISO Schedule Adjustments. The Physical Energy Schedule that results from CAISO’s day-ahead scheduling process shall be the “Day-Ahead Physical Energy Schedule.” Similarly, the Effective Energy Schedule that results from CAISO’s day-ahead scheduling process shall be the “Day-Ahead Effective Energy Schedule.”

- (e) Buyer shall have the right, with no less than ten (10) minutes notice to Seller, to issue real-time dispatch orders to start or cease Unit operations (x) prior to the IOU Administrative Transfer Date, during any time for which Buyer has Scheduled a Physical Energy Schedule or a Reservation of the Unit or (y) in the case of emergencies (as declared by CAISO or, prior to the IOU Administrative Transfer Date, as verifiable extraordinary circumstances wherein any of Buyer's other dedicated or Unit Firm Energy resources become unavailable), and Seller shall comply with such orders and make appropriate changes to the Unit's Final Physical Energy Schedule as soon as practicable pursuant to CAISO Requirements. Any such real-time dispatch orders shall be in compliance with the Unit's Operating Limits but, notwithstanding anything to the contrary herein, need not be in compliance with CAISO Requirements concerning scheduling procedures. Notwithstanding Buyer's request for real-time changes in Unit operations, Seller shall comply with any CAISO dispatch instructions directing Unit operations pursuant to the CAISO Tariff to the extent there is any conflict between Buyer's real-time dispatch order and CAISO dispatch instructions. For purposes of settlement and invoicing for the period between the time Seller commences to comply with Buyer's real-time dispatch order and the time a revised Final Physical Energy Schedule is effective pursuant to CAISO Requirements for scheduling, (1) Buyer shall pay Seller the Contract Price for the Product produced by the Unit pursuant to any real-time dispatch order that results in the start of the Unit as if there were a valid Final Physical Energy Schedule requiring the start of Unit operations pursuant to such dispatch order and Seller shall pay Buyer any monies it receives from CAISO for the such Product, and (2) Buyer shall pay Seller pursuant to any real-time dispatch order from Buyer that ceases Unit operations earlier than as provided in the Final Physical Energy Schedule in effect at the time of Buyer's real-time dispatch order equal to the sum of all CAISO charges directly attributable to the schedule deviation (inclusive of charges for imbalance Energy, replacement reserves or any penalties associated with such deviations) occurring because of the Buyer's real-time dispatch order.
- (f) Due to any reason including, but not limited to, CAISO Schedule Adjustments, changes in the Unit's Expected Dispatchable Quantity ("EDQ"), changes in the Unit's availability, Buyer's election to start the Unit due to an emergency or to utilize a Reservation of the Unit, or Buyer's election to cease Unit operation, Buyer may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule consistent with the CAISO Scheduling processes, and the Seller shall make corresponding schedule changes as necessary. In addition, Seller may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule due to changes in the Unit's EDQ or availability or due to CAISO Schedule Adjustments, consistent with the CAISO Scheduling processes, and the Buyer shall make corresponding schedule changes as necessary; provided that if CAISO directs the operation of the Unit during an hour in which Buyer has not Scheduled it to operate, then Buyer shall not be obligated to make any schedule changes,

and the Unit's operation during such hour shall be governed by this Section 3.2. No later than one (1) hour before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO's hour-ahead scheduling process, Seller shall inform Buyer of changes, if any, to the Unit's availability or the Unit's EDQ for any upcoming hour and the associated Effective Energy Schedules and the reason(s) for such change(s). No later than forty-five (45) minutes before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO's hour-ahead scheduling process, Buyer may (i) Schedule with Seller a Physical Energy Schedule for the start-up of the Unit in the case of emergencies or with respect to a Reservation of the Unit; and/or (ii) Schedule with Seller with respect to the Unit then operating its election to cease Unit operation. Seller shall submit or cause to be submitted in its preferred hour-ahead schedule the delivery of the Product to Buyer as an Effective Energy Schedule and Buyer shall accept such schedule. Seller shall inform Buyer of any CAISO Schedule Adjustments imposed on the preferred hour-ahead schedule during the CAISO hour-ahead scheduling process. The Physical Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Physical Energy Schedule. Similarly, the Effective Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Effective Energy Schedule. This Section 3.2(f) in no way limits Buyer's dispatch rights relative to a Reservation of the Unit as set forth in Section 3.2(d). This Section 3.2(f) in no way extends beyond the IOU Administrative Transfer Date Buyer's rights under Section 3.2 (d) and (e) to schedule a Reservation and make dispatch instructions with respect to such reserved capacity.

- (g) All hours in which Buyer Schedules the will be counted against the total hours that may be Scheduled by Buyer in a given year from the Unit, as provided in Section P of the Gates Transaction, except for (i) hours in which Buyer has Scheduled Energy from the Unit and the Final Physical Energy Schedule is subsequently reduced to zero because the Unit subsequently becomes unavailable or (ii) hours in which Buyer is unable to Schedule Energy that has been scheduled pursuant to Section 3.2(f) because the Unit subsequently becomes unavailable; provided that, with respect hours where the EDQ is less than the NDDC, only the quotient of EDQ divided by NDDC shall count against such total hours. In exercising its Scheduling rights, Buyer may only request a Physical Energy Schedule or issue a real-time dispatch order for the Unit at either 0% or 100% of the Unit's EDQ, as it exists from time-to-time, and only for those hours in which the Unit has been designated as dispatchable, in each case in accordance with the latest Dispatchability Notice. Buyer must Schedule under this Section 3.2 in a manner consistent with the provisions of Section P of the Gates Transaction (the Unit's Operating Limits) and, excepting only the provisions of Section 3.2(e) above concerning Schedule changes, the CAISO Requirements. Seller may reject any schedule, without liability, that does not meet the requirements of the prior sentence; provided that Seller will make a good faith effort to provide prompt notice to

Buyer of the basis for any such rejection and shall accommodate corrections made prior to Buyer's Scheduling deadline. Buyer shall purchase and receive each Final Physical Energy Schedule or compensate Seller for any Product produced pursuant to Buyer's real-time dispatch request pursuant to Section 3.2(e) according to the settlement and invoicing terms in Section 3.2(e). With respect to each Physical Energy Schedule, Seller shall Schedule, or cause to be Scheduled, and Buyer shall Schedule or cause to be Scheduled, the Final Effective Energy Schedule (such quantity as determined by Seller) at the Energy Delivery Point.

(h) (1) Seller shall provide the Quantity of Energy required by the Final Physical Energy Schedule or real-time dispatch order in accordance with this Section 3.2 from the Unit, relying on CAISO imbalance energy only as required in the event of an outage (except as may be otherwise provided in Section 3.2(e)), provided that in the event of a change in the dispatchability of the Unit (due to outage or Curtailment Event) or a change in the EDQ, Seller shall provide prompt notice to Buyer and shall forthwith submit Scheduling changes to the CAISO as required, and Buyer shall make corresponding Scheduling changes as required, and Seller's obligation to submit such Final Physical Energy Schedule as existing at the time of such notice shall not continue beyond the period beginning at the next regular opportunity for Seller to Schedule such revisions pursuant to CAISO's Scheduling processes immediately following issuance of Seller's Dispatchability Notice.

(2) In the event that (A) Seller willfully and intentionally fails to deliver to Buyer in any hour any material portion of the Expected Dispatchable Quantity for a Unit, (B) such failure to deliver is unexcused and Seller did not believe in good faith such failure was excused (with a valid basis for such belief), (C) such failure to deliver is a result of Seller's affirmative determination not to deliver energy from the Unit at the Delivery Point to Buyer in fulfillment of a properly submitted and accepted Schedule, and (D) such Energy is willfully diverted to a third party, other than as expressly permitted herein, then such an event shall be an Event of Default and Buyer shall be entitled to damages set forth in Article V.

(3) In the event that (A) Seller willfully and intentionally fails to deliver to Buyer in any hour any material portion of the Expected Dispatchable Quantity for a Unit, (B) such failure to deliver is unexcused and Seller did not believe in good faith such failure was excused (with a valid basis for such belief), (C) such failure to deliver is a result of Seller's affirmative determination not to deliver energy from the Unit at the Delivery Point to Buyer in fulfillment of a properly submitted and accepted Schedule, and (D) such failure occurs during such time as a day-ahead CAISO warning of a potential stage alert has been issued or any stage alert is in effect for such hours, then, Seller shall pay, as liquidated damages and not as a penalty, for each such event: the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) provided that such reduction shall not reduce the Monthly Capacity Payment below zero; and

provided further that all such failures of any Units occurring during any calendar day shall comprise one such event. Such liquidated damages shall be due and owing during the next billing cycle. The Parties agree that damages at the time of breach would be very difficult to measure accurately and that the foregoing liquidated damage amount is a reasonable estimate of the amount necessary to compensate Buyer for the breach.

- (i) Subject to the limitations set forth in this Agreement, Seller will operate the Unit in accordance with CAISO's Final Physical Energy Schedule. Buyer shall have first priority use of the Unit. However, except for hours in which Buyer has Scheduled the Unit pursuant to Section 3.2, Seller shall have unrestricted use of the Unit and may dispatch or commit the Unit for such purposes as it elects in its sole discretion provided however that any such use by Seller shall be at all times reasonable and shall not foreseeably cause a material and adverse impact upon Seller's ability to fulfill its obligations hereunder.
- (j) Should CAISO dispatch the Unit at any time when Seller has such unrestricted use, the costs and benefits of such dispatch shall be borne by Seller and such dispatch hours will not count against the annual limits on operating hours that Buyer may Schedule, unless and until such dispatch continues into an hour when Buyer has Scheduled the Unit's Capacity, in which case such hour(s) shall be counted against the annual limits on operating hours that Buyer may schedule. Provided however, that Buyer shall not request a reduction to Scheduled operation during any period when CAISO has directed the Unit's operation.
- (k) The Scheduling procedures and related statements of rights and obligations in this Section 3.2 contemplate continuation of the existing market design and CAISO Requirements. However, this Section is subject in all respects to Section 10.14.
- (l) (1) Seller shall provide, in its capacity as Scheduling Coordinator for the Unit, or through the Scheduling Coordinator selected by Seller in its sole discretion, consistent with the CAISO Requirements, all notices and other information to the CAISO regarding the Unit's operational status and proposed schedule as required by CAISO Requirements and this Agreement.

(2) Each Party shall at all times during the Delivery Period for the Transaction, in connection with the exercise of its rights and performance of its obligations hereunder, adhere to the provisions of this Agreement, CAISO Requirements (excepting only the provisions of Section 3.2(e) above concerning Schedule changes) and applicable law and, without limiting the foregoing, to the applicable operating policies, criteria and/or guidelines of NERC, CAISO Requirements (excepting only the provisions of Section 3.2(e) above concerning Schedule changes), and any other regional or subregional operational and reliability requirements; provided that capital expenditures or

increases in expenses for operations and maintenance required for compliance with a change in law shall be governed by Section 10.14, as applicable. In the event that a Party receives notice of a change or proposed change to the CAISO Requirements that would require a Party to take or refrain from taking an action that would be inconsistent with such Party's rights and/or obligations hereunder, the Party receiving notice will promptly provide notice to the other Party to the extent practicable that such CAISO Requirement conflicts with the rights and/or obligations of a Party under this Agreement and the Parties shall proceed according to Section 10.14.

- (m) To the extent that (i) either Party Schedules or fails to Schedule with the CAISO in accordance with this Agreement as necessary for the CAISO to receive and transmit the Physical Energy Schedule or (ii) Buyer issues real-time dispatch orders, but only to the extent that the Seller is unable, because of CAISO Requirements, to make a Schedule change to reflect such real-time dispatch order from Buyer, and such action or inaction results in the imposition of CAISO charges on either Party ("CAISO Charges"), the Party whose action or failure to act caused the CAISO Charges to be assessed shall bear such costs. In the event that such CAISO Charges are assessed on a Party due to the other Party's action or inaction, the Party receiving the charge shall provide the other Party notice of such event, together with all supporting documentation demonstrating the other Party's responsibility for such charge and Seller shall include it in its monthly invoice, subject to Section 6.5 as a credit or charge to Buyer, as applicable.

3.3 **Force Majeure.**

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction, such Party (the "Claiming Party") shall give notice and details of the Force Majeure to the other Party as soon as practicable and provide the other Party with the expected duration of the Force Majeure and the date upon which it expects such Force Majeure to end. Unless agreed to otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction for so long as and to the extent, prevented by such Force Majeure other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure. The Claiming Party shall provide notice and details of the Force Majeure to the other Party as soon as practicable and shall remedy the Force Majeure with all reasonable dispatch. For all Force Majeure events expected to have or having a duration of greater than one (1) month, the Claiming Party shall provide the non-Claiming Party with monthly progress reports on the progress of remedying such Force Majeure. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure, other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure. Pursuant to the terms of Section 5.5 hereof, any Force Majeure which interrupts Seller's performance of its obligations under this Agreement, with respect to the Unit, for a continuous period of more than twelve (12) months shall be considered an event upon which Buyer may terminate this Agreement with respect to the Unit.

3.4 **Reserved.**

3.5 **No Immunity Claim.**

California law authorizes suits based on contract against the State or its agencies, and Buyer agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

3.6 **Payments Under Agreement an Operating Expense.**

Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all Bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the California general fund.

3.7 **Rate Covenant; No Impairment.**

In accordance with Section 80134 of the California Water Code, Buyer covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Buyer pursuant to this Agreement. As provided in Section 80200 of the California Water Code, while any obligations of Buyer pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Buyer and the California Public Utilities Commission ("CPUC") shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the Seller under this Agreement.

3.8 **No More Favorable Terms.**

Buyer shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Seller, without in each case offering such arrangements to Seller.

3.9 **Sources of Payment; No Debt of State.**

Buyer's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Buyer arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Buyer hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

3.10 **Application of Government Code and the Public Contracts Code.**

Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the California Government Code and the California Public Contracts Code applicable to state contracts, including but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the California Water Code, Buyer has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

3.11 Governmental Approvals. Seller shall, at its expense, acquire and maintain in effect, from any and all government agencies with jurisdiction over Seller and/or the construction or operation of the Projects, all required governmental approvals, in each case necessary at that time (i) for the construction of the Units in accordance with this Agreement; and (ii) for the operation of the Units to produce the Contract Quantity. Seller shall cause the Units to be operated in substantial compliance with each Unit's governmental approvals.

ARTICLE FOUR: RESERVED

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party in Section 10.2 is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to make available and/or deliver the Product, the exclusive remedies for which are (i) the Availability Adjustment set forth in the Gates Transaction (ii) the Guaranteed Start Reliability Adjustment set forth in the Gates Transaction, and (iii) Section 5.5(c)) if such failure is not remedied within thirty (30) Business Days after written notice;

- (d) such Party becomes Bankrupt;
- (e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets (or in the case of Buyer, substantially all of the Fund or its responsibilities with respect to purchasing Energy for use by, or on behalf of, consumers other than itself) to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right: (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the “Termination Payment”) which shall be the aggregate of the Market Value and Termination Costs calculated in accordance with Section 5.3 which shall be paid (net of any payments withheld by the Non-Defaulting Party pursuant to Section 5.2(ii) above) together with interest thereon, no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. The Termination Payment shall accrue interest at the Interest Rate during the period between receipt of written notice of an Early Termination Date and payment of the Termination Payment. Prior to issuance of such notice of termination to the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party. Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party is Bankrupt, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

5.3 Termination Payment Calculations.

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- a) “Market Value” shall be (i) in the case Buyer is the Non-Defaulting Party, the present value of the positive difference, if any, of (a) payments by Buyer under a Replacement Contract based on the “Per Unit Market Price,” and (b) payments by Buyer under this Agreement, or (ii) in the case Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (a)

receipts by Seller under this Agreement, and (b) receipts by Seller under a Replacement Contract based on the Per Unit Market Price, in the case of each of (i) and (ii) using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is not an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- d) In no event, however, shall a party's Market Value or Termination Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date.

5.4 **Suspension of Performance.**

Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon three (3) days written notice to the Defaulting Party, shall have the right (i) to Suspend its performance under any or all Transactions as of the date set forth in the notice ("Suspension Date") and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity, including, without limitation cover costs for unmitigated losses incurred by the Non-Defaulting Party during periods in which it has suspended performance.

5.5 **Other Termination/Suspension Provisions.**

- a) N/A
- b) Seller shall have the right to terminate this Agreement upon ten (10) Business Days written notice if, for as long as the Bonds are outstanding, Buyer fails to maintain a rating of either Baa3 or better by Moody's or BBB- or better by S&P on the Bonds, which failure continues for thirty (30) Business Days or, if the Bonds are not outstanding and Buyer has obtained a rating based on the ability of the Fund to pay its obligations under this Agreement, Buyer fails to maintain a rating of either Baa3 or better by Moody's or BBB- or better by S&P, which failure continues for thirty (30) Business Days.
- c) In the event that either: (i) the Actual Availability Factor is less than 60% for each of the latest two consecutive six month periods or (ii) the Actual Starting Reliability Factor is less than 60% for each of the latest two consecutive six month periods, Buyer may terminate or suspend this Agreement upon ten (10) Business Days written notice.
- d) Buyer shall be entitled to terminate this Agreement for the Unit upon ten (10) Business Days written notice if Seller's performance from the Unit has been interrupted by Force Majeure for a continuous period of greater than twelve (12) months.
- e) In the event that the FERC authorizes any changes to the CAISO Requirements which materially changes the provisions of this Agreement and the Parties cannot mutually agree upon modifications and changes to the Agreement, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party.
- f) In the event of early termination under this Section 5.5, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein.

5.6 **Failure To Deliver Energy.**

Except as provided in Sections 3.2(h), 3.3, 5.5(c) and (d), in no event shall a failure by Seller to deliver Energy from the Unit be deemed to be an Event of Default or cause for termination, suspension or action for damages, as the sole remedies of Buyer for Seller's failure to provide Capacity or deliver Energy are the Availability Adjustment, the Guaranteed Starting Reliability Adjustment and the energy withholding damages in Section 3.2(h).

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period.

Each month Seller shall bill Buyer, and Buyer shall pay Seller, the Contract Price for the previous month. Unless otherwise specifically agreed upon by the Parties in the Gates Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Basis of Invoice.

Seller's invoice to Buyer will be based upon calculations employing the Unadjusted Metered Energy and the Final Physical Energy Schedules for the Unit and natural gas delivered for use in the Unit as measured by the Gas Metering Equipment, if natural gas is supplied by Seller, and in any event as adjusted in accordance with the terms of the Gates Transaction. All calculations shall utilize four (4) significant digits of data, as available, and any rounding of final calculated dollar amounts shall be to the nearest full dollar. The amount of Unadjusted Metered Energy, the Final Physical Energy Schedules, natural gas delivered and the cost of natural gas delivered will be adjusted in subsequent months' invoices when applicable actual data is available. Seller's invoice to Buyer with respect to the CAISO Charge will be based upon data and costs provided by the CAISO, but will be subject to adjustment in subsequent months' invoices based on adjustments or final data and costs provided by CAISO; provided, however, to the extent requested by Buyer, Seller hereby agrees to provide all CAISO detailed settlement information provided to Seller's scheduling coordinator so as to allow the Buyer to calculate the amounts contemplated in this Agreement. Seller's invoice to Buyer shall include the relevant meter data for the Unit, the records of the Final Physical Energy Schedules, the Variable Fuel Cost, the Fixed Fuel Charge, the Burner Tip Gas Price, the Billing Start Fuel, the data and calculations made with respect to the Heat Rate Adjustment, the Actual Availability Factor for the Unit, the Availability Adjustment, the Actual Starting Reliability Factor, the Guaranteed Starting Reliability Adjustment, any adjustments due to the CAISO Requirements, any other adjustments set forth herein, and any taxes that Seller has had to pay that Buyer is obligated to reimburse as provided under Section 9.2 hereof.

6.3 Timeliness of Payment.

Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of the month in which such invoice is rendered, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.4 **Disputes and Adjustments of Invoices.**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered; provided that if the error is traceable to an error or adjustment in charges assessed by the CAISO, then in order for an adjustment to the invoices pursuant to this Agreement to be recognized and to affect the payment obligations of the Parties hereunder, the Party seeking the adjustment must bring the error to the attention of the other Party no later than five (5) Business Days before expiration of the time period during which the Party assessed such charge by the CAISO may dispute the charge with the CAISO. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance pursuant to a Transaction occurred, the right to payment for such performance is waived.

6.5 **Netting of Payments.**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to the Gates Transaction through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement pursuant to the Gates Transaction, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.6 **Payment Obligation Absent Netting.**

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE SEVEN: LIMITATIONS

Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE

DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: SECURITY

8.1 Seller Collateral Requirements:

- a) On or prior to the Commercial Operation Date, or in the event that the Commercial Operation Date is within sixty (60) days following the Effective Date, then within sixty (60) days following the Commercial Operation Date of the Unit, Seller shall execute in favor of and deliver to Buyer a deed of trust or collateral assignment of lease with respect to the Unit (in either case, a "Security Agreement"), which secures the payment obligations of Seller to Buyer hereunder so as provide a first lien on the Unit, except as provided below (the "Secured Obligations"). The Security Agreement shall be in a form reasonably acceptable to Buyer and shall provide Buyer, among other rights, (i) a right to receive notices of default from secured lenders and parties with an assigned interest in the Secured Obligations, (ii) in the case of an Event of Default by Seller hereunder with respect to the Secured Obligations, the right to step in and cure defaults of the Seller to the senior lender and if such right is exercised by the Buyer then a right to step in and operate the Project. The rights of Buyer thereunder shall at all times be subject and

subordinate to, as the case may be, either (i) the rights and interests of the Unit lessor, in the case of a collateral assignment of a Unit lease (a "Unit Lease"), or (ii) in the case of a deed of trust, the rights and interests of any beneficiary under any prior or senior deed of trust or other security interest (a "Senior Lien") executed or to be executed by Seller in favor of any person or persons (a "Senior Lender") providing construction and/or term financing for the Unit, including any renewal, refinancing, modification or extension thereof (a "Project Financing").

- b) At any time that a Security Agreement is outstanding hereunder in favor of Buyer, Buyer shall, upon the written request of Seller, enter into a written agreement with any Senior Lender under a Project Financing (which may include a Senior Lender that is an affiliate of Seller, or of any of its members, partners or shareholders so long as such affiliate of Seller or any of its members, partners or shareholder of Seller providing such financing shall not be subject to any more favorable lien position than an unrelated third party in an arms' length transaction) providing:
 - (i) that until the satisfaction in full by Seller of all indebtedness and other obligations owed under the Project Financing, Buyer will not, without the prior written consent of the Senior Lender, exercise any rights or remedies under the Security Agreement in favor of Buyer or take any action with respect to any collateral securing the obligations of Seller thereunder;
 - (ii) if Buyer's Security Agreement constitutes a first priority lien, such lien shall be subordinated and junior to any Senior Lien granted by Seller to secure the Project Financing; and
 - (iii) such other provisions as such Senior Lender may reasonably request; provided, however, that in no event shall the Buyer be required to agree to terms and provisions of any consent to assignment that increase the liabilities or diminish in any way the rights of the Buyer hereunder, such provisions being subject to the approval of the Buyers in its absolute discretion.
- c) At any time that a Security Agreement is outstanding hereunder in favor of Buyer, Buyer also shall, upon the written request of Seller, enter into a written agreement with any lessor of the Unit acknowledging the rights and interests of the lessor under the Unit Lease and agreeing, upon execution, enforcement or foreclosure under the Security Agreement, to be bound by the terms and conditions of such Unit Lease.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges.

Seller is liable for and shall pay, or cause to be paid, or reimburse the Buyer for if the Buyer has paid, all taxes applicable to the Product or a Transaction that arise prior to the Energy Delivery Point. If the Buyer is required to remit such tax, the amount shall be deducted from any sums due to the Seller. Buyer is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Product or a transaction arising at and from the Energy Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of Seller). Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Product or a Transaction, except as parenthetically addressed above. Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. Buyer shall be entitled to the benefit or reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement.

The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated; provided, however, that the Gates Transaction shall not terminate until the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default, and in each case such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, including without limitation payment of all obligations relating to the Gates Transaction incurred prior to such termination date. In no event shall the Master Agreement terminate prior to, or not in conjunction with, the termination of the Gates Transaction.

Representations and Warranties.

- a) On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party:
- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and the Gates Transaction, except with respect to such regulatory authorizations relating to performance that are not required as of the date hereof;
 - (iii) the execution, delivery and performance of this Master Agreement and the Gates Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or, subject to the exception set forth in Section 10.2(a)(ii), any law, rule, regulation, order or the like applicable to it;
 - (iv) this Master Agreement, the Gates Transaction, and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
 - (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
 - (vi) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and the Gates Transaction; and
 - (vii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and the Gates Transaction and as to whether this Master Agreement and Gates Transaction are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and the Gates Transaction.

- b) In addition, Buyer represents and warrants to the Seller, and covenants that continuing throughout the term of this Master Agreement and the Gates Transaction, and with respect to this Master Agreement and the Gates Transaction, as follows:
- (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement and the Gates Transaction have been taken and performed as required under the Act;
 - (ii) entry into and performance of this Master Agreement and the Gates Transaction by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law;
 - (iii) the term of this Master Agreement and the Gates Transaction does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law;
 - (iv) Buyer's obligations to make payments hereunder will enjoy first priority of payment at all times under any and all bond resolutions or indentures or other indebtedness to which it is a party or other governing documents and are to be made solely from a Special Fund;
 - (v) entry into and performance of this Master Agreement and the Gates Transaction by the Buyer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Buyer otherwise entitled to such exclusion; and
 - (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of the Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or the Trust Estate, or any contractual restriction binding on or affecting it or the Trust Estate.

10.3 **Title and Risk of Loss.**

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Energy Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Energy Delivery Point.

10.4 **Reserved.**

10.5 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, Seller (or, with respect to clause (i) (iv) or (v), Buyer) may, without the consent of the other Party, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party, (iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Buyer under the Act, or (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by S&P, and Baa2 or better by Moody's; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Buyer, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof.

10.6 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices.

- c) All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than for the Scheduling of deliveries, and such other communications related to day-to-day operations as specified in the Operating Procedures) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

- d) Seller will provide Buyer with a copy of its market-based tariff as filed with the FERC provided that a failure of Seller to so provide a copy to Buyer will not be deemed a breach or failure to perform a material covenant or obligation of this Agreement.

10.8 **General.**

This Master Agreement (including the exhibits, schedules and any written supplements hereto), and the Gates Transaction (set forth in Exhibit A, and the attachments thereto) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Master Agreement or the Gates Transaction shall be enforceable unless reduced to writing and executed by both Parties and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.3. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any of its applicable tariffs are inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful or rendered impossible because of a statutory or regulatory change or a change in CAISO Requirements (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 **Audit.**

Each Party has the right, at its sole expense and during normal working hours following reasonable notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement or the Gates Transaction. If requested, a Party shall provide or make available to the other Party statements evidencing the Quantity delivered at the Energy Delivery Point or charges assessed on it by the CAISO. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment

was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 **Confidentiality.** Not applicable.

10.11 **No Retail Services; No Agency.**

- a) Nothing contained in this Agreement shall grant any rights to or obligate Seller to provide any services hereunder directly to or for retail customers of any person; and Buyer covenants that all Energy delivered to it from the Unit will be used solely for resale and not for direct consumption.
- b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

10.12 **Dispute Resolution.**

Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 10.12, the Parties shall have all rights available under law or equity.

10.13 **No Rate Change Applications**

For the term of this Agreement, except as otherwise provided herein, both Parties agree not to seek at FERC or with any other regulatory authority, regulatory action related to the Agreement that would result in a change to the rates to be charged herein.

10.14 **Meet and Confer**

Should the FERC, or any other entity with jurisdiction over CAISO, authorize any changes to the CAISO Requirements that materially change the Scheduling of deliveries or the

methods or processes CAISO uses to determine charges or payments to Scheduling Coordinators, and such changes materially affect the provisions of this Agreement, the Parties agree to enter good faith negotiations as soon as practicable to modify the Agreement to account for such changes to the CAISO Requirements, attempting in all events to restore or maintain for each Party as nearly as possible, its respective rights and obligations and benefits under this Agreement. In the event that the Parties cannot agree upon mutually acceptable modifications to the Agreement in light of the changes to the CAISO Requirement, then either Party may terminate this Agreement as provided in Section 5.5(e), without any further obligations, including but not limited to, the Termination Payment.

10.15 **Novation**

Notwithstanding the foregoing limitations on assignment, at any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement as may be agreed to by a Qualified Electric Corporation. This Agreement shall terminate upon the effective date of such Replacement Agreement. The occurrence of the effective date of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of the Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable. "Qualified Electric Corporation" means an electrical corporation, as defined by AB 1X, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Corporation and Baa2 or better by Moody's Investor Services and is not negative outlook or Credit Watch from either rating agency at the effective date of such Replacement Agreement.

EXHIBIT A

AMENDED AND RESTATED MASTER POWER PURCHASE AND SALE AGREEMENT GATES TRANSACTION

This confirmation letter shall confirm the Transaction agreed to on December 17, 2002 between Wellhead Power Gates, LLC ("Party A") and California Department of Water Resources, acting solely under the authority and powers created by AB1X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the California State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product:

- ☐ Into _____, Seller's Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☒ Unit Firm
(Specify Unit(s): The Unit specified in Section A of the Gates Transaction.)
- ☐ Other: _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency
(Specify: _____) | | |

Contract Quantity: See Attachment 1 to this Exhibit A.

Delivery Point: See Attachment 1 to this Exhibit A.

Contract Price: See Attachment 1 to this Exhibit A.

Energy Price: See Attachment 1 to this Exhibit A.

Other Charges: See Attachment 1 to this Exhibit A.

Confirmation Letter
Page 2

Delivery Period: Commencing on the Effective Date and terminating on October 31, 2011,
unless extended or terminated pursuant to the explicit terms of the Agreement.

Special Conditions: See Attachment 1 to this Exhibit A

Scheduling: See Attachment 1 to this Exhibit A

Option Buyer: N.A.

Option Seller: N.A.

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated December 17, 2002 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

Wellhead Power Gates, LLC

[Party B]

California Department of Water Resources,
acting solely under the authority and powers
created by AB1-X, codified as Sections 80000
through 80270 of the California Water Code
(the "Act"), and not under its powers and
responsibilities with respect to the California
State Water Resources Development System

By: _____

President

By: _____

Name: _____

Title: _____

ATTACHMENT 1
Gates Transaction

A. Description of Facilities

The Gates Transaction consists of a 46 MW simple cycle peaking plant utilizing one General Electric LM6000 combustion turbine-generator set ("CT") designed to convert natural gas to electricity located at Section 29, T20, R17 on the east side of Jayne Ave. and Gale Ave. in southwest Fresno County at an elevation of 440 feet above mean sea level ("Site") and interconnected to the CAISO-controlled grid via a tap off of the PG&E Gates-Coalinga #2 70 KV transmission line. The CT fires natural gas using combustion and emissions control technology that will limit NOx emissions to no greater than 5 PPM. Pursuant to the terms and conditions below, Seller will receive natural gas pursuant to the Approved Fuel Plan at the Unit's Gas Receipt Point and deliver the Final Physical Energy Schedule to DWR at the Unit's Energy Delivery Point.

B. Contract Quantity

1. The Net Guaranteed Capacity ("NGC") of the Unit is 46.387 MW. The Net Guaranteed Dependable Capacity ("NGDC") is set forth in Table 2 attached hereto.
2. The Contract Quantity for the Unit for purposes of determining the Capacity Payment only shall be the Net Demonstrated Capacity or NDC of the Unit which, together with the Net Demonstrated Dependable Capacity or NDDC of the Unit for the purpose of determining the Expected Dispatch Quantity or EDQ, shall be established and updated from time to time by testing and adjustment pursuant to the procedures and requirements of the "Net Demonstrated Capacity Test for Peaking Facilities" attached hereto as Procedure 1. The initial test pursuant to Procedure 1 has already been completed, and Table 2 currently represents both the NDDC and the NGDC of the Unit; NDDC shall be subject to adjustment with the next test pursuant to Procedure 1.

C. Commercial Operation Date

1. The commercial operation date for the Unit (the "Commercial Operation Date" or "COD") is December 27, 2001.
2. In consideration of the mutual resolution by the Parties of any prior disputes regarding the COD for the Unit, the Parties have released any and all such claims or defenses and accept the revised capacity payment schedule attached hereto as Table 1.

D. Availability

1. Subject to the Unit's Operating Limits, Buyer may Schedule hourly Energy from the Unit in an amount equal to each hour's EDQ for the Unit for that day as specified by Seller in Seller's Dispatchability Notice, in accordance with the Scheduling requirements set forth in Section 3.2 and other limitations as provided in this Gates Transaction.

2. Seller will provide Buyer daily notices of the Unit's availability and dispatchability in terms of EDQ; and thereafter, Seller will provide timely notices of subsequent changes in availability and EDQ (each such notice, a "Dispatchability Notice"). Seller's initial Dispatchability Notice for each day to be Scheduled shall be provided to Buyer at least two (2) hours prior to Buyer's day-ahead Scheduling deadline provided for in Section 3.2 (d).
3. The Actual Availability Factor ("AAF") of the Unit will be calculated each month and compared to the Unit's Guaranteed Availability Factor ("GAF") to yield an Availability Adjustment ("AA"). The GAF of the Unit for a particular Delivery Month is:

June – October, inclusive	98%	each month ("Summer Months")
All Other months	95%	each month for other than June through October ("Non-Summer Months"); (the AAF for a Non-Summer Month shall be calculated on a rolling seven-month basis using only Non-Summer Months).

The AAF equals the total of Hourly Unit Availability divided by the Dispatchable Hours, which can be expressed as follows:

$$AAF = (\sum_{hours} \text{Hourly Unit Availability}) / \text{Dispatchable Hours}$$

Where:

"Dispatchable Hours" is equal to 17 hours multiplied by the number of Dispatch Days in the applicable billing month less hours during Excused Outages during the month;

"Hourly Unit Availability" is determined for the Unit for each Dispatchable Hour determined as follows:

- (i) As the quotient of the hourly EDQ divided by the hourly NDDC in each of the hours when a Physical Energy Schedule for the Unit or a Reservation is scheduled by Buyer; and;
- (ii) As the quotient of the hourly EDQ divided by the hourly NDDC in each of the hours when the Unit was available for scheduling of a Physical Energy Schedule or a Reservation pursuant to a Dispatchability Notice but the Unit was not scheduled or reserved by Buyer; or
- (iii) Zero (0) for all other hours.

Hence, where the AAF is less than the GAF for a Delivery Month, the Availability Adjustment will be determined as follows:

$$AA = NDC * CP * (GAF - AAF) * \text{Period Availability Adjustment}$$

Where NDC is the then current Net Demonstrated Capacity, CP is the Capacity Payment Rate for the given Delivery Month in the given year; and, Period Availability Adjustment is set as two (2) for the Delivery Months of June through October inclusive, or one (1) for all other months.

- Example for August 2001: Assume for the month of August 2001 that the Unit's NDC is 20 MW (20,000 kW) and that it is available 353 hours (and assume NDDC = NDC based on ambient at site standard conditions). DWR has the right to dispatch the Unit 391 hours during that month (23 dispatch days * 17 dispatch hours/day). The AAF = 353/391 = 90.28%. The applicable GAF is 98.00%. Because the AAF is less than the GAF, the AA for that month will be the following amount:

$$AA = 20,000 \text{ kW} * \$13.75/\text{kW-mo} * (0.9800 - 0.9028) * 2 = \$42,460.00$$

- Example 2 for August 2001: Assume for the month of August 2001 that the Unit's NDC is 20 MW (20,000 kW) and due to a vibration problem, the Unit can only be made available at 15 MW in five of the Dispatchability Notices of the month (and assume NDDC = NDC based on ambient at site standard conditions). Consequently, the Hourly Unit Availability for each such hour in the month is equal to (15/20) or 0.75, and the equivalent hours made available are equal to (0.75 * 5 dispatch days * 17 dispatch hours/day) + (18 dispatch days * 17 dispatch hours/day) or 369.75 equivalent available hours. DWR has the right to dispatch the Unit 391 hours during that month (23 dispatch days * 17 dispatch hours/day). The AAF = 369.75/391 = 94.56%. The applicable GAF is 98.00%. Because the AAF is less than the GAF, the AA for that month will be the following amount:

$$AA = 20,000 \text{ kW} * \$13.75/\text{kW-mo} * (0.9800 - 0.9456) * 2 = \$18,891.00$$

- Example for December 2001: The rolling seven month period, excluding June through October, ending with December 2001 is January 2001 through May 2001, November 2001 and December 2001. Assume that the Unit's COD is August 1, 2001. Thus, January 2001 through May 2001 may be ignored. Assume that the Unit's NDC is 20 MW (20,000 kW) and that it is fully available 430 hours and 420 hours for the months of November 2001 and December 2001, respectively. DWR has the right to dispatch the Unit 442 hours during each of those months (26 dispatch days * 17 dispatch hours/day). The Unit was available 850 hours during the seven-month period. DWR had dispatch rights for 884 hours during the same seven-month period. The AAF = 850/884 = 96.15%. The applicable GAF is 95.00%. Because the AAF is greater than the GAF, for December 2001 there is no AA.
4. Buyer shall have the right to appoint a third party auditor to audit Buyer's records regarding the Unit in order to verify Seller's claims of availability pursuant to Section

10.9 and any such disputes shall be resolved pursuant to Section 10.12. Without limiting the applicability of Section 3.2(h), in the event that, following such audit, the Buyer asserts that a Unit's Hourly Unit Availability was been communicated as greater than zero (0) by Seller when records reflect that the Hourly Unit Availability was actually zero (0), then Seller shall be penalized in an amount equal to the number of such improperly reported Dispatchable Hours in a month in which such inaccuracy occurred, if any, multiplied by two multiplied by the quotient of the Capacity Payment for such Unit for such month divided by the number of Dispatchable Hours in such month.

E. Capacity Payment

Commencing on the Effective Date, Buyer shall pay Seller (in arrears) each month during the Delivery Period the Monthly Capacity Payment ("MCP") applicable to the Unit. The Monthly Capacity Payment shall be equal to the product of the Capacity Payment Rate ("CP"), and the then current NDC and shall be prorated on a daily basis in the event of a partial Delivery Month; provided that the Monthly Capacity Payment for December 2002 shall be reduced by an amount equal to \$3,024.47 in consideration of the adjustments due under the Prior Agreement through October, 2002.

The Monthly Capacity Payment for the Unit (by month) can be expressed as follows:

$$\text{MCP} = \text{NDC} * \text{Capacity Payment Rate}$$

where, the "Capacity Payment Rate" is the applicable rate set forth in Table 1 to this Attachment 1 which lists the Capacity Payment Rates in \$/kW-Delivery Month. The "Delivery Months" are January through December and, collectively for the same calendar year, the "Annual Delivery Period".

Example for March 2002: Assume for the month of March 2002 that the Unit's NDC is 22 MW (22,000 kW). The CP is \$13.75/kW-mo. Hence, the MCP for that Delivery Month would be calculated as follows:

$$\text{MCP} = 22,000 \text{ kW} * \$13.75/\text{kW-mo} = \$302,500$$

F. Guaranteed Starting Reliability Adjustment ("GSRA")

The Actual Starting Reliability Factor ("ASRF") will be calculated each month and compared to the Unit's Guaranteed Starting Reliability Factor ("GSRF") to yield the Guaranteed Starting Reliability Adjustment ("GSRA"). The GSRF for the Unit shall be 99% during Summer Months and 95% during Non-Summer Months for the term of this Agreement. The ASRF shall be calculated each month as 1.0 minus the quotient of 1) the number of Buyer start requests that did not result in a Successful Start as defined in Section K of the Gates Transaction over 2) the number of starts that could have been requested by Buyer during the month. For any month the GSRA shall apply only if the ASRF is less than the GSRF, as follows:

$$\text{GSRA} = \text{NDC} * \text{CP} * (\text{GSRF} - \text{ASRF}) * \text{Period Start-up Adjustment}$$

where, NDC is the then current Net Demonstrated Capacity, CP is the Capacity Payment Rate, and “Period Start-up Adjustment” is either two (2) for the Delivery Months of June through October, inclusive, or one (1) for all other months.

G. Delivery Point(s) and Interconnections

1. The Energy Delivery Point for the Unit is the point of interconnection with PG&E’s transmission facilities, which is on the high side of the Unit’s 13.8 kV / 70 kV transformer immediately prior to PG&E’s manual air break switch. The Unit will deliver in the CAISO zone where it is interconnected with the CAISO controlled grid. As of the date this Agreement is entered into, the Unit’s Energy Delivery Point is in ZP 26. However, CAISO may redefine zones over time. The delivery zone for the Unit will always be the zone that contains the Unit. Systems losses and congestion management are Buyer’s responsibility.
2. Seller warrants that the natural gas and electric interconnections for the Unit have been completed such that the interconnections are capable of supporting operation of the associated Unit at its full design capacity.

H. Energy Price

For each MWh delivered pursuant to a Final Physical Energy Schedule or a Buyer dispatch instruction, that is not produced during a start-up as addressed in Section K below, and which was generated by Seller-provided fuel or obtained from the CAISO imbalance energy supplies, Buyer will pay Seller an Energy Price each month in U.S. dollars calculated as follows:

$$\text{Energy Price (in \$)} = \text{BHR} * \text{BTGP} * \text{Total Qualifying MWh} * \\ (1000 \text{ kWh} / \text{MWh}) * (\text{mmBtu} / 1,000,000 \text{ Btu})$$

Where for the Unit,

BHR = is the “Billing Heat Rate” which shall be the lesser of the Unit’s monthly Actual Heat Rate and the Guaranteed Heat Rate, expressed in Btu/kWh (HHV), as provided in Section I hereof;

BTGP is the “Burner Tip Gas Price” expressed in \$ / mmBtu (HHV), as provided in Section M hereof; and

“Total Qualifying MWh” is the number of MWh for the month delivered pursuant to a Final Physical Energy Schedule, that were not produced during a start-up as addressed in Section K below, and which were generated by Seller-provided fuel or obtained from the CAISO imbalance energy supplies, plus any MWh generated in response to a Buyer dispatch instruction pursuant to Section 3.2.

I. Guaranteed Heat Rate (“GHR”)

1. The Guaranteed Heat Rate (“GHR”) for the Unit is 10,000 Btu/kWh (HHV) (higher heating value or “HHV”).
2. Each month Seller will perform a comparison of the Actual Heat Rate (“AHR”) for the Unit against the GHR, as follows:
 - a) For every month, Seller will measure the Actual Heat Rate (“AHR”) for the Unit for all hours in which the following three conditions are satisfied (“AHR Hours”): (i) a Physical Energy Schedule from the Unit was scheduled by Buyer, (ii) Seller delivered the full Final Physical Energy Schedule for the Unit to Buyer and (iii) the Unit operated at steady-state and at full load (including minor variations in output due to changes in ambient conditions, but not including ramping up or down or planned or unplanned discontinuation of operations). Such monthly AHR will be measured in Btu/kWh (HHV) using the sum of the Designated Hourly Fuel Consumption for each AHR Hour of the month divided by the sum of the Final Physical Energy Schedules for each such hour of the month. The “Designated Hourly Fuel Consumption” for the Unit in any hour is the product of (i) the sum of any Final Physical Energy Schedule for that hour plus any energy generated in response to a Buyer dispatch instruction, divided by Unadjusted Metered Energy for that hour, multiplied by (ii) actual fuel consumption of the Unit for such hour as measured by the Gas Metering Equipment.
 - b) The GHR for the Delivery Month and the AHR for the Delivery Month will be used to determine the Billing Heat Rate for the monthly Energy Price in that Delivery Month as set forth in Section H above.
3. The Operations Committee shall evaluate, and may recommend to the Parties, procedures to provide additional incentives to Seller to maintain low actual heat rate for the Unit.

J. Variable O&M Payments

The Variable O&M Payment (“VOMP”) for each monthly billing period equals the Variable O&M Rate multiplied by the sum over such month of 1) the Unadjusted Metered Energy generated in response to a Buyer dispatch instruction relative to a Reservation of the Unit and 2) , during those hours when Buyer has scheduled a Physical Energy Schedule from the Unit pursuant to Section 3.2, the lesser of in each hour: (i) the Unadjusted Metered Energy (in MWh), or (ii) the Final Physical Energy Schedule (in MWh). The Variable O&M Rate for the term of the Agreement is \$7.00 / MWh.

K. Start-up Payment

Buyer shall pay Seller a Monthly Start Payment or “MSP” equal to the product of the Start Price (“SP”) of \$1,000.00 per successful start of the Unit times the number of successful starts of the Unit in the month in response to a start request from Buyer. A start is deemed

successful where the Unit has either: (i) reached its Final Physical Energy Schedule or (ii) the Unit is in a steady state of operation for one (1) hour following the initiation of the start sequence (“Successful Start”). Buyer is not obligated to pay the Start Price for unsuccessful starts or for starts not requested by Buyer. Buyer is entitled to no more than two (2) Successful Starts per day.

L. Start Fuel Price (“SFP”)

1. For each Successful Start in response to a start request from Buyer and using fuel supplied by Seller pursuant to the Approved Fuel Plan, Buyer shall pay Seller a “Start Fuel Price” or “SFP” as follows:

$$\text{SFP (\$/start)} = \text{BSF} * \text{BTGP}$$

where,

BSF is the “Billing Start Fuel” which shall be the lesser of the Actual Start Fuel (“ASF”) or the Guaranteed Start Fuel (“GSF”), expressed in mmBtu/start (HHV) where,

ASF is the amount of fuel consumed during the period commencing upon the initiation of the starting sequence and ending when either (i) for Successful Starts, the Unit has reached its Final Physical Energy Schedule or one (1) hour following the initiation of the start sequence, or (ii) for unsuccessful starts, the attempt to start is terminated and the Unit begins an outage;

“Guaranteed Start Fuel” (“GSF”) is 200 mmBtu (HHV) / Start-up; and,

BTGP is the “Burner Tip Gas Price” as defined in Section M.

2. SFP shall be zero for each and every start that (i) uses fuel supplied by Buyer, (ii) was not requested by Buyer or (iii) was unsuccessful.
3. The Monthly Start Fuel Payment or “MSFP” shall be the sum of SFP for all starts in a month.
4. If Buyer supplies the fuel consumed during start-up, Seller shall reimburse Buyer monthly for its actual incremental delivered cost of fuel:
 - (a) For those starts where ASF exceeds GSF for successful starts (and only to the extent that ASF exceeded GSF); and
 - (b) for unsuccessful starts, if any.

M. Fuel Cost and Fuel Supply

1. Seller shall arrange for natural gas transportation to the Unit which transportation may be interruptible. In the event Buyer notifies Seller in its annual review of the Approved Fuel

Plan described below that it wishes for Seller to arrange for firm natural gas transportation, Seller shall use commercially reasonable efforts to obtain firm transportation service but shall have no liability in the event that firm transportation is not available. Seller's cost of natural gas transportation shall be included in the calculation of the Variable Fuel Cost or Fixed Fuel Charge as appropriate.

2. Seller will allocate for Buyer's account all actual fuel costs incurred by Seller for the Unit for all hours in which Energy was Scheduled from the Unit by Buyer utilizing (for purposes of allocating fuel usage to the specific hours in which the Unit operated with respect to Buyer's Schedule) the meter data from the Gas Metering Equipment. Such amount allocated to Buyer's account will be deemed the "Preliminary Variable Fuel Cost" and will include all actual variable fuel costs, including commodity, transportation, fees, taxes and other charges, delivered to the Unit, as such costs are determined in accordance with the then-current Approved Fuel Plan and/or pursuant to the Default Fuel Price, excluding imbalance costs addressed in M.5; provided, however, that any fixed fuel costs incurred by Seller in providing fuel to the Unit pursuant to the Approved Fuel Plan shall be recovered by Seller from Buyer in the form of the monthly Fixed Fuel Charge ("FFC"), as provided in Section M.4 below, and these portions of Unit fuel costs shall be otherwise excluded from the Preliminary Variable Fuel Cost. In addition, the Preliminary Variable Fuel Cost will be adjusted as follows: For each hour in which the Unit is dispatched by Buyer, the portion of the Preliminary Variable Fuel Cost allocated to such hour (the "Preliminary Hourly Variable Fuel Cost") will be multiplied by the ratio of 1) the sum of the Final Physical Energy Schedule for such hour and any additional energy generated in response to a Buyer dispatch instruction, to 2) the Unadjusted Metered Energy for such hour, and such resulting product will be deemed the "Designated Hourly Variable Fuel Cost". The sum of the Designated Hourly Variable Fuel Costs will equal the "Variable Fuel Cost" for such month.
3. The Burner Tip Gas Price ("BTGP") shall be calculated by dividing the Variable Fuel Cost for a month by the sum of the Designated Hourly Fuel Consumption for the month, expressed as mmBtu, as set forth in Section I of the Gates Transaction.
4. "Fixed Fuel Charge" ("FFC") is any fixed fuel costs (*i.e.*, commodity, capacity or transportation reservation charges, use-or-pay charges, or take-or-pay charges, balancing administrative charges, and the like) charged by third parties and incurred by Seller in providing fuel to the Unit on behalf of Buyer in accordance with an Approved Fuel Plan, but not recovered through the Variable Fuel Cost or imbalance cost provisions in Section M.5. In addition, to the extent actual annual Scheduling of Energy by Buyer deviates from the projections of Energy dispatches contained in Buyer's Annual Dispatch Plan for that year provided pursuant to Section 3.2(c) of the Agreement, Buyer shall pay to Seller any costs incurred in contracting for fuel supply pursuant to the Approved Fuel Plan that cannot otherwise be collected from Buyer and which Seller, despite its reasonable efforts, was unable to mitigate. In the event that an Approved Fuel Plan approved by Buyer provides for a firm supply of fuel commodity or transportation for that year and, due to reasons outside of Seller's reasonable control, such firm supply or transportation is interrupted or becomes unavailable in whole or in part causing a Curtailment Event, Seller shall use reasonable efforts to mitigate such failure of supply or

transportation, and any costs greater than those contained in the Approved Fuel Plan will be paid by Buyer; provided that Seller will pass-through to Buyer any compensation, damages or other benefits it receives as a result of such interruption or unavailability.

5. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) an AHR for the Unit in excess of the GHR for the Unit as provided herein, (ii) a Unit outage other than an Excused Outage, (iii) a failure by Seller to Schedule natural gas in accordance with Buyer's day-ahead Energy Schedule, provided that Buyer has provided notice of its day-ahead Energy Schedule prior to the deadline set forth in Section 3.2 for Scheduling, or (iv) intra-day Scheduling by Seller, such imbalance charge shall be paid by Seller. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) intra-day Scheduling by Buyer pursuant to Section 3.2 hereof, (ii) late notice of a day-ahead Energy schedule or changes to such day-ahead Energy schedule after the deadline set forth in Section 3.2 for day-ahead Scheduling to the extent any such Scheduling is permitted, (iii) an Excused Outage, or (iv) if Seller has contracted for a firm fuel commodity supply and interruptible fuel transportation both pursuant to an Approved Fuel Plan and such transportation is curtailed or interrupted, resulting in a commodity imbalance charge, or (v) if Buyer furnishes natural gas for all or a portion of its load and fails to nominate and deliver quantities of natural gas matching the requirements for the hours dispatched including due to non-compliance with any transportation balancing order issued by the natural gas transporter (such as operational flow orders or emergency flow orders), such imbalance charge shall be passed through to Buyer. Notwithstanding anything to the contrary herein, in the event Buyer elects not to supply fuel under an Approved Fuel Plan, Seller shall ensure that Buyer obtains a pro-rata portion (commensurate with its dispatch of the Units) of the same benefits that Buyer would have obtained had Buyer elected to Supply Fuel, including balancing provisions that offer no less benefit than the LDC would provide for the same period.
6. The Party providing natural gas under the Approved Fuel Plan shall nominate and schedule for delivery all the natural gas to be received by the Unit in accordance with established pipeline nomination guidelines and practices and transporters' tariff(s). For example, under current guidelines, practices and tariffs, in order to nominate the necessary natural gas supplies without charges or penalties, exclusive of holidays, Seller, as natural gas provider, will require, at a minimum, 24 hours notice prior to the actual time on a weekday, Tuesday through Friday, that the Unit is Scheduled for dispatch, and notice by 7:00 am CST/CDT, Friday if the Unit is Scheduled for dispatch on Saturday, Sunday or Monday. Thus, in order to meet the current deadlines for natural gas nominations, without penalty, Buyer must provide notice of its Day-Ahead Physical Energy Schedule for a Monday in accordance with Section 3.2(c) no later than 6:00 a.m. on the previous Friday. Buyer acknowledges that volumes and deliveries of natural gas not nominated and scheduled at least 24 hours in advance are subject to limited marketplace availability and charges or penalties associated with the nomination and scheduling procedures and deadlines set forth in natural gas transporters' tariffs may apply.

7. It is contemplated that an Approved Fuel Plan may provide for both Parties to supply natural gas for use in the Unit. The Parties intend that the quantity of natural gas actually delivered and received each day at the Seller's Unit will equal the quantity to be used by that Unit but it is recognized that due to operating conditions, the quantities of natural gas delivered and received may not be in balance in any one particular day. Seller will establish an operational balancing account for the purpose of balancing the natural gas supply and any non-volumetric costs associated with such account, such as administrative charges, will be included in the monthly invoice to Buyer and shall be paid by Buyer. Volumetric costs associated with the operational balancing account will be subject to the allocation provisions in Section M.2. Seller will use a contracted gas marketer or other means to establish and maintain such a balancing account. Seller shall use commercially reasonable efforts to secure the best cost and terms for gas management services. Seller will obtain a minimum of two (2) competitive bids from qualified gas marketers for these services. Within seven (7) days of presentation to Buyer, Buyer shall:

(a) accept the best evaluated proposal and Seller will perform (or cause to be performed) such gas management services in accordance with the Approved Fuel Plan; or

(b) elect to perform gas management services in accordance with the Approved Fuel Plan and charge Seller a gas management fee for all gas used by Seller for non-Department dispatch of the Units. Such fee shall not exceed the best evaluated proposal referred to in the immediately preceding Section 7(a).

8. (i) Unless Buyer elects to provide natural gas to the Unit as provided in item (ii) below, Seller shall supply natural gas to the Unit pursuant to an Approved Fuel Plan, except as noted below. Seller will propose in a fuel plan to Buyer on or before January 1, 2003 (or as soon as practicable after the Effective Date) and each January 1 thereafter, for the twelve-month period commencing on April 1 of each year. On or before February 1, 2003 (or as soon as practicable after the Effective Date) and each February 1 thereafter, Buyer shall either approve such plan or submit to Seller for Seller's approval a reasonable alternate plan. The Approved Fuel Plan will reflect operational requirements of Buyer and will address the commodity and transportation requirement ("Approved Fuel Plan"). In the event no Approved Fuel Plan has been agreed to, Buyer shall have the option of supplying natural gas to the Unit for any particular flow day, and if Buyer elects not to supply natural gas to the Unit for any particular flow day, then Seller shall supply natural gas to the Unit at its actual delivered cost subject to a cap equal to the daily "Common High" price for PG&E Citygate for the applicable flow date as published in Platt's Gas Daily or successor publication mutually satisfactory to Buyer and Seller, plus applicable PG&E local distribution charges in accordance with PG&E's tariffs and applicable PG&E tariff surcharges, if any ("Default Fuel Price"). Seller shall make reasonable commercial efforts to pay the lowest possible price for any fuel it obtains on Buyer's account in the absence of an Approved Fuel Plan.
- (ii) Buyer shall have the right, but not the obligation, to supply natural gas to the Unit, utilizing Seller's Natural Gas LDC transportation arrangements, annually for the

remainder of the term of the Gates Transaction, which right Buyer may exercise by written notice to Seller no later than February 1 of each year for the period commencing April 1 of the same year. In the event of such exercise, the commodity portion of the fuel cost shall be zero. If Buyer elects in any year of this Agreement to supply its own fuel commodity for the Facilities, any such supply shall be coordinated with any previously adopted Approved Fuel Plan in a manner which does not displace other natural gas commodity and/or firm transportation positions taken by the Seller in accordance with such prior adopted Approved Fuel Plan unless Buyer elects to assume responsibility for such natural gas positions as part of its supply plan. Any fuel supplied by Buyer to Seller shall be delivered to such point(s) on the Natural Gas LDC system(s) as are designated by Seller.

- (iii) Buyer shall have the right, but not the obligation, to be the fuel manager for the Unit, which shall include, but not be limited to, the scheduling, nominating and balancing of all fuel for the Unit, which right Buyer may exercise as part of the Approved Fuel Plan each year or at any time with three (3) months prior written notice to Seller. If Buyer is not the fuel manager and Seller, pursuant to an Approved Fuel Plan, obtains firm gas transportation, storage or supply, (i) then Buyer shall have full use of any such firm arrangement during any period when any such firm arrangement is not required for the Unit by Buyer's Scheduling of the Unit and (ii) if any such firm arrangement is used by both Buyer and Seller, then, at the option of Buyer, such arrangement must be divisible and shall be allocated between Buyer and Seller based on each Party's financial responsibility for such arrangement.

N. Total Monthly Payment

1. For any month, there may be a Monthly Capacity Adjustment ("MCA"), not to exceed the MCP for the month and subject to potential carry-forward. If the MCA is greater than the MCP, then the difference shall be carried forward to the next month for inclusion in the calculation of that next month's MCA, but shall not survive the Buyer's obligation to pay the MCP. In no event, however, can the MCP, less the MCA for any given month, result in an amount that is less than zero. The MCA shall be determined as follows:

If $(AA + GSRA + \text{Prior Month MCA Carry Forward})$ is less than or equal to the MCP, then MCA shall equal $(AA + GSRA + \text{Prior Month MCA Carry Forward})$; else,

If $(AA + GSRA + \text{Prior Month MCA Carry Forward})$ is greater than MCP, then $MCA = MCP$, and $([AA + GSRA + \text{Prior Month MCA Carry Forward}] - MCP)$ shall be carried forward for inclusion in the next month's MCA (the next month's "Prior Month MCA Carry Forward")

Where: AA is the Availability Adjustment as set forth in as set forth in Section D; and GSRA is the Guaranteed Starting Reliability Adjustment set forth in Section F.

2. For purposes of summary only and subject to the terms of this Agreement, the compensation due Seller from Buyer each month can be summarized as follows (“Total Monthly Payment” or “TMP”):

$$\text{TMP (\$/mo.)} = (\text{MCP} - \text{MCA}) + \text{Energy Price} + \text{VOMP} + \text{MSP} + \text{MSFP} + \text{FFC} + \text{Other Adjustments}$$

Where:

- MCP is the Monthly Capacity Payment as set forth in Section E;
- MCA is the Monthly Capacity Adjustment as set forth in Section N.1;
- Energy Price is as set forth in Section H;
- VOMP is the Variable Operation and Maintenance Payment as set forth in Section J;
- MSP is the Monthly Start Payment as set forth in Section K;
- MSFP is the Monthly Start Fuel Payment as set forth in Section L; and,
- FFC is the Fixed Fuel Charge as set forth in Section M; and,
- Other Adjustments are those adjustments set forth in the Agreement, including, but not limited to, the energy withholding adjustment (Section 3.2(h)(3)), availability miscommunication adjustment (Section D.4), fuel reimbursement (Section L.3) or fuel imbalance charges (Section M.5).

O. Emissions and Operations

1. Seller is responsible to obtain plant permits and any emission offsets in order to supply Energy at the Unit’s Capacity consistent with the Operating Limits as specified for the Unit identified in Section A of the Gates Transaction.
2. [Reserved]
3. Seller will operate and maintain the Unit in accordance with Prudent Utility Practice. Subject to its obligation to comply with CAISO Requirements, Seller will use its best efforts to coordinate maintenance scheduling with Buyer and ensure that maintenance is initially scheduled to occur during off-peak hours during the Non-Summer Months, and will provide Buyer with reasonable notice of such scheduled maintenance and any changes to the timing thereof; provided that only two weeks per year of scheduled maintenance may be deemed Excused Outage under the Agreement, and further provided that in no event shall scheduled maintenance occur during July, August or September of any year. Further, all provisions relating to the scheduling of maintenance are subject to adjustment with respect to timing and duration, in accordance with CAISO Requirements.

P. Unit’s Operating Limits

The Unit’s Operating Limits reflect the dispatch limitations, Scheduling limitations, maintenance requirements, physical operating limits, start times, ramp rates, etc. as specified in original equipment manufacturer/architect engineer/vendor specifications which are to be provided by Seller to Buyer 60 days after COD or as soon thereafter as such data is provided by the third party. Buyer and Seller agree that the specific Operating Limits set forth below are

intended to reflect those specifications and limitations, and accordingly Buyer's dispatch of the Unit must not conflict with the Unit's Operating Limits and with the CAISO Requirements.

The Operating Limits for the Unit are as follows:

- (a) Buyer may dispatch Unit for no more than two thousand (2,500) hours during each calendar year (commencing with the Commercial Operation Date for the Unit) until the IOU Administrative Transfer Date, and thereafter for no more than four thousand (4,000) hours during each calendar year;
- (b) In no event shall the Unit be dispatched by Buyer for operation of less than four (4) sequential hours;
- (c) At no time shall the Unit be operated pursuant to Buyer's dispatch for more than seventeen (17) hours in any given day;
- (d) Buyer is entitled to no more than two (2) Successful Starts per day; and,
- (e) There shall be a period of non-operation of not less than three (3) hours between scheduled operations by Buyer.

Q. [Reserved]

R. Operations Committee; Operating Procedures

1. Buyer and Seller have established and shall continue to use an Operations Committee consisting of four members. Each of Buyer and Seller shall be permitted to appoint two such members. The Operations Committee shall develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein (the "Operating Procedures"). Such Operating Procedures shall include, but not be limited to, (1) procedures for Scheduling, (2) methods of day-to-day communications, (3) conducting four hour Capacity tests, (4) key personnel lists for each of Buyer and Seller, (5) format and delivery of Availability Notices, (6) coordinating arrangements for the delivery of natural gas, (7) scheduling and notice of maintenance, and (8) record keeping; provided that failure to agree on such procedures shall not relieve either of the Parties of its rights and obligations under this Agreement.

2. During the term of the Agreement, the Operations Committee shall administer the Operation Procedures, address and resolve operational issues as they arise from time-to-time (not in contravention of the terms of this Agreement) and shall operate by unanimous consent of the members.

S. Metering

1. Electricity.

(i) Energy delivered by Seller shall be metered at the Energy Delivery Point for the Unit consistent with CAISO Requirements. The Electric Metering Equipment shall be used to determine conclusively, subject to Section S.7 herein, the amount of Unadjusted Metered Energy from the Unit.

(ii) Seller shall be responsible for performing, or causing to be performed on or before the Commercial Operation Date, and shall bear all costs and expenses of the installation, maintenance, testing and initial calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and protective apparatus, including any transmission equipment and related facilities, necessary to interconnect the Unit at the Energy Delivery Point to the relevant electrical system. All Electric Metering Equipment must operate in conformance with the CAISO Requirements.

2. Natural Gas.

(i) Natural gas delivered for use in the Unit shall be metered on a continuous real-time basis by Utility's Gas Metering Equipment. Measurement of natural gas for the purpose of determining inputs to the Variable Fuel Cost, BTGP and the AHR of the Unit shall be measured by the Gas Metering Equipment. Measurement of natural gas for the purpose of determining the amount of gas delivered by the gas transporter and for determining imbalances, and other charges that are assessed by the gas transporter or gas supplier will be measured by the Gas Metering Equipment.

(ii) As between the Parties, Seller shall be responsible for performing, or causing to be performed, and shall bear all costs and expenses of the installation, maintenance, repair, testing and initial calibration of the Gas Metering Equipment (to the extent not otherwise installed, maintained, tested and calibrated by the delivering pipeline(s) or supplier of natural gas to the Unit).

3. Change in Measurement Method. If, at any time during the term of the Gates Transaction a new method or technique is developed with respect to electricity or natural gas measurement, or the determination of the factors used in electricity or natural gas measurement, such new method or technique may be substituted for the method set forth in this Section S herein when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

4. Industry Standards. All Electric Metering Equipment and Gas Metering Equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Utility Practices and CAISO Requirements, as applicable in the case of the Electric Metering Equipment, and in accordance with the applicable American Gas Association and Gas Industry Standards Board in the case of the Gas Metering Equipment.

5. Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment and Gas Metering Equipment irrespective of whether such Electric Metering Equipment or Gas Metering

Equipment is owned or operated by Seller or by a third party. The records from such Electric Metering Equipment and Gas Metering Equipment shall be the property of Seller, but upon reasonable advance Notice, Seller shall make available to Buyer's third party auditor all data, records and charts relating to the Electric Metering Equipment and Gas Metering Equipment, together with measurements and calculations therefrom, for inspection and verification.

6. Installations. Any installations, maintenance, repair, inspections, cleaning, changing, testing or calibration of Electric Metering Equipment and Gas Metering Equipment shall be scheduled by Seller; provided, however, that installation, maintenance, repair, inspections, cleaning, changing, testing or calibration which will or could affect deliveries of natural gas or Energy shall not be made without the prior written consent of Buyer, which shall not be unreasonably withheld, and shall be scheduled to the extent possible and consistent with CAISO Requirements to coincide with periods of outages of the Unit.

7. Calibration. Seller at its sole cost and expense shall inspect and calibrate, or cause to be inspected, all Electric Metering Equipment and Gas Metering Equipment, periodically, but not less frequently than annually or as required by the Transmission Provider or CAISO. Correction shall be made when any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2%) or such lower percentage as may be established by applicable tariff of the delivery pipeline(s), or (ii) in the case of Electric Metering Equipment, per CAISO Requirements. Correction to amounts billed and/or paid shall be made for the period during which the measurement instruments were in error. If the period cannot be ascertained, correction with respect to natural gas billings shall be made for the last half of the period elapsed since the last test date; and the electric billings shall be corrected in accordance with CAISO Requirements. The measuring instrument shall be adjusted immediately to measure accurately.

8. Data. Seller shall provide CAISO metering settlement data to Buyer on a monthly basis and, at Buyer's option and expense, real-time access to meter data via appropriate telemetering equipment.

T. Records.

The Parties shall, for three (3) years or such longer period as may be required by FERC, CAISO Requirements or the Transmission Provider, each keep and maintain accurate and detailed records relating to the Unit's hourly deliveries of Energy and natural gas consumption, all invoices submitted pursuant to this Agreement, and other data required for invoice calculations not otherwise available from a public source. Such records shall be made available for inspection by either Party's third party auditor during normal business hours upon reasonable notice consistent with Section 10.9.

TABLE 1
GATES TRANSACTION

Capacity Table (\$ / kW-Month)

Time Period	Amount
COD through July 31, 2002	\$13.75 / kW-Delivery Month
August 1, 2002 through September 30, 2002	\$12.50 / kW-Delivery Month
October 1, 2002 through December 31, 2002	\$18.25 / kW-Delivery Month
January 1, 2003 through July 31, 2003	\$12.50 / kW-Delivery Month
August 1, 2003 through July 31, 2004	\$12.08 / kW-Delivery Month
August 1, 2004 through July 31, 2005	\$12.08 / kW-Delivery Month
August 1, 2005 through July 31, 2006	\$11.67 / kW-Delivery Month
August 1, 2006 through July 31, 2007	\$11.67 / kW-Delivery Month
August 1, 2007 through Termination	\$4.92 / kW-Delivery Month

TABLE 2
Net Guaranteed Dependable Capacity
Gates Transaction
Test Results June 13, 2002

Ambient Temperature (Degrees F)	KW	Ambient Temperature (Degrees F)	KW	Ambient Temperature (Degrees F)	KW
15	46,702	49	46,585	83	39,129
16	46,702	50	46,565	84	38,753
17	46,702	51	46,545	85	38,402
18	46,702	52	46,526	86	38,037
19	46,702	53	46,506	87	37,682
20	46,702	54	46,486	88	37,328
21	46,702	55	46,466	89	36,975
22	46,702	56	46,446	90	36,628
23	46,702	57	46,427	91	36,281
24	46,702	58	46,407	92	35,939
25	46,702	59	46,387	93	35,600
26	46,702	60	46,367	94	35,264
27	46,702	61	46,347	95	34,916
28	46,702	62	46,328	96	34,581
29	46,702	63	46,308	97	34,247
30	46,702	64	46,288	98	33,909
31	46,702	65	46,268	99	33,576
32	46,702	66	46,248	100	33,244
33	46,702	67	45,822	101	32,916
34	46,702	68	45,348	102	32,594
35	46,702	69	44,895	103	32,280
36	46,702	70	44,435	104	31,975
37	46,702	71	43,986	105	31,675
38	46,702	72	43,527	106	31,380
39	46,702	73	43,103	107	31,083
40	46,702	74	42,693	108	30,788
41	46,702	75	42,289	109	30,500
42	46,702	76	41,892	110	30,217
43	46,702	77	41,484	111	29,932
44	46,684	78	41,082	112	29,648
45	46,664	79	40,668	113	29,376
46	46,644	80	40,255	114	29,112
47	46,625	81	39,877	115	28,845
48	46,605	82	39,496		

Table 3
Gates Transaction
MANUFACTURER'S CERTIFIED CORRECTION CURVE

Wellhead Power Gates, LLC
Gates Peaker

Net Power Output vs. Ambient Temperature

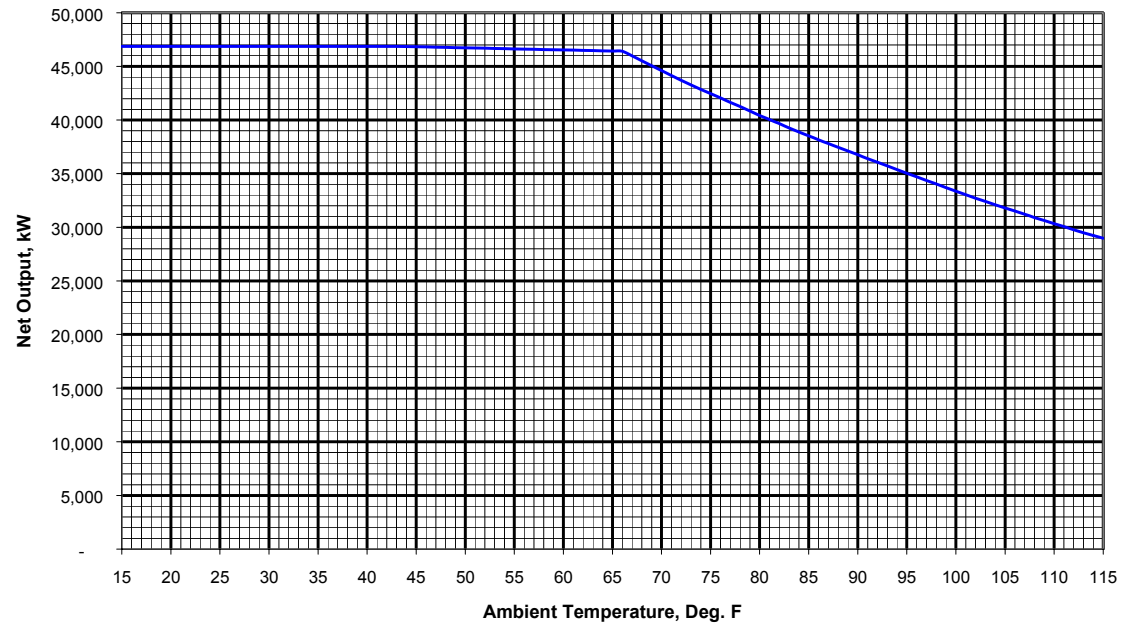


TABLE 4
Gates Transaction

BAROMETRIC PRESSURE ADJUSTMENT FORMULA

MW (adjusted) = MW (observed) * [Standard barometric site pressure/Observed barometric site pressure]

Where, for the Gates site (440 famsl):

Standard barometric site pressure = 29.45 in. Hg

Example adjustment calculation:

Observed site conditions and output on day of test/operations:

Power output	45,300 kW
Barometric pressure	30.02 in. Hg

Barometric pressure adjustment calculation:

MW(corrected) = 45,300 kW * (29.45/30.02)

MW(corrected) = 45,300 kW * .98101

MW(corrected) = 44,440 kW

Procedure 1
Gates Transaction
Net Demonstrated Capacity Test for Peaking Facilities

I. Test Procedure and Schedule

Seller shall prepare and submit its written, proposed test procedure and schedule to Buyer no less than fifteen (15) business days before the proposed test date for Buyer's acceptance and, within ten (10) business days of such submittal, Buyer and Seller shall meet to review and discuss the proposed test procedure and schedule. Except for the initial test, Buyer and Seller may waive such meeting by mutual agreement.

Within five (5) business days of such meeting or waiver thereof, Buyer shall submit either its written acceptance or revision, including the reasons for any revisions, of the proposed test procedure and schedule to Seller. The failure by Buyer to submit timely such written acceptance or revision shall constitute acceptance of the proposed test procedure and schedule by Buyer. Such accepted or revised test procedure and schedule shall be the approved test procedure and schedule.

Seller shall provide written notice to Buyer of any changes to the approved test procedure and schedule and the reason(s) therefore as soon as reasonably practicable, such changes being subject to Buyer's approval.

The proposed and approved test procedures shall comply with the requirements of Section 3 of the Performance Test Code ASME PTC 22-1997 for Gas Turbine Power Plants or its successor ("PTC 22").

II. Annual Scheduling Requirement

A successful test is required to be performed once per calendar year. The initial successful test has been performed prior to COD and subsequent successful tests are required to be performed between April 1 and May 31 each year thereafter. For all tests after COD, Seller and Buyer, to the extent possible, shall schedule such tests during periods in which Buyer has Scheduled the Unit to operate.

A successful test is also required to be performed as soon as reasonably practicable after any change to the Unit that is reasonably expected to change the then-current NDC of the Unit by at least 10% and such change is reasonably expected to last for at least six (6) months. If the timing of such a required test shall occur reasonably close to the timing of a required annual test, a single test may be conducted to satisfy both requirements.

III. Test Conditions

A. Start-Up and Stabilization Period

Prior to the start of the test, the Unit shall be started, synchronized and brought to full load using normal start procedures and then operated continuously at full load for as long as it is necessary, but in no case for no less than one hour, for all measured parameters to achieve stable, normal conditions such that any variations in such parameters will be within the tolerances provided in Table 3.3.3 of PTC 22.

B. Operating Personnel

The Unit shall be operated by Seller's operating personnel (whether employees of Seller or Seller's operating contractor) and no one else, including, but not limited to, representatives of (i) any manufacturer or supplier of the Unit's equipment, (ii) any provider of engineering or design services related to the Unit, (iii) any provider of construction services related to the Unit, or (iv) any third party consultant.

C. Duration

The duration of the test shall be four (4) continuous hours, which shall commence only upon satisfactory completion of the Start-Up and Stabilization Period.

D. Operating Procedures and Conditions

At all times, the Unit shall be operated in compliance with the approved test procedure, Prudent Utility Practice and all operating procedures recommended, required or established by (i) the manufacturer or supplier of the Unit's equipment (ii) the firm(s) that engineered and designed the Unit and (iii) the contractor(s) that constructed the Unit. Any tests during which such compliance is breached shall be deemed invalid and not to have occurred.

At no time during the test shall the Unit be subject to disruptions or abnormal conditions including, but not limited to, any (i) unstable conditions, (ii) equipment, operating, or regulatory restrictions, or (iii) changes in load from full load other than those fluctuations naturally arising from variations in ambient temperature. Should any such disruption be encountered during a test, the test shall be restarted or rescheduled.

E. Applicable Laws and Permits

At all times, the Unit shall be in compliance with all applicable laws, regulations and permits, including, but not limited to, those governing safety and air and water emissions. Any tests during which such compliance is breached shall be deemed invalid and not to have occurred.

F. Data Collection

At a minimum, the following parameters will be measured and recorded simultaneously at no greater than five minute intervals:

- a) Instantaneous ambient relative humidity (%)
- b) Instantaneous ambient barometric pressure (inches Hg)
- c) Instantaneous ambient temperature (°F)
- d) Net output since last measurement at the Energy Delivery Point (kWh)
- e) CEMS data required per air permit

- f) Turbine speed (rpm)
- g) Turbine temperatures (°F)
- h) Turbine pressures (psig)

Upon mutual agreement of the parties, additional parameters may be measured and recorded simultaneously with the required parameters. Such additional parameters may include for example, gross generator output and fuel consumption, and such additional measurements may be used only to determine whether or not any abnormal condition occurred during the test.

G. Instrumentation and Metering

At its own cost, Seller shall provide all instrumentation, metering and data collection equipment required to perform the test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Unit achieves COD for monitoring and controlling the operation of the Unit and collecting the data required for Seller to prepare and submit its monthly invoice to Buyer shall be used for the test. At its own cost, Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the test. All Electrical Metering Equipment shall be in compliance with CAISO Requirements including, but not limited to, those relating to certification and calibration.

IV. Adjustments to Data and Calculation of NDC and NDDC

Seller shall perform the calculation of NDC and NDDC using the test data subject to the following adjustments:

The net output for each data point shall be adjusted to Site Standard Conditions by first adjusting for differences, if any, between the instantaneous ambient barometric pressure for that data point and Site Standard Conditions using the formula in Table 4 of Attachment 1 of Exhibit A of the Gates Transaction, and adjusting that result for differences, if any, between the instantaneous ambient temperature for that data point and Site Standard Conditions using the manufacturer's certified performance curve in Table 3 of Attachment 1 of Exhibit A of the Gates Transaction. No adjustment shall be made with respect to relative humidity.

Using the resulting net output data from this sequential, two-step adjustment process, the average net kW output at Site Standard Conditions at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the test. The average of the sixteen average net kW values thus calculated shall be the NDC, provided that in no event may the NDC exceed the NGC.

Using the manufacturer's certified performance curve Table 3 of Attachment 1 of Exhibit A of the Gates Transaction, the NDC thus calculated shall be used to generate a preliminary NDDC versus temperature table in the form of Table 2 of Attachment 1 of Exhibit A of the Gates Transaction. Such table showing the preliminary NDDC versus temperature shall have the values truncated to the next lowest whole MW value and such table of truncated NDDC values shall be the NDDC table used for scheduling and dispatch purposes of this Agreement.

V. Test Reports

Within ten (10) business days after the completion of the test, Seller shall prepare and submit to Buyer a written report of the test in accordance with Section 6 of PTC 22. At a minimum, the report shall include (i) the approved test procedure, (ii) a record of the personnel present for the test whether serving in an operating, testing, monitoring or other such participatory role, (iii) documentation of the satisfactory completion of the start-up and stabilization period, (iv) a record of any unusual or abnormal conditions or events that occurred during the test and any actions taken in response thereto, (v) the unadjusted data, (vi) a verification of the validity of the test in accordance with Section 3.5.1 of PTC 22, (vii) the adjusted data with supporting calculations, (viii) NDC and NDDC with supporting calculations, and (ix) Seller's statement of either Seller's acceptance of the test or Seller's rejection of the test and reason(s) therefore. Within ten (10) business days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the test or Buyer's rejection of the test and reason(s) therefore.

VI. Test Acceptance and Re-Testing

If Seller and Buyer both accept a test, the NDC and NDDC shall be updated to reflect the results of such test effective upon the first day of the month following the month in which Buyer receives Seller's test report.

If Seller is unable to complete a test for any reason, it shall be permitted to reconduct such test.

If either Seller or Buyer reasonably believes an abnormal condition occurred which may have adversely impacted a completed test, such party may request and shall receive a re-test.

If, following two completed re-tests, Seller and Buyer cannot agree that the original test and two re-tests produced accurate, reliable and usable results, the parties shall hire an independent engineer to observe a third re-test and, after considering the data and records from the original test and three re-tests, to declare the NDC and NDDC of the Unit. The cost of such independent engineer shall be shared equally by the parties.

However, if, following two or more completed re-tests, Seller and Buyer do agree that the most recent test produced inaccurate or unreliable results, the parties may, but are not required to, hire such an independent engineer.

VII. Cost and Revenue

For all tests prior to COD, the Energy produced by Seller shall be scheduled by Seller into the CAISO controlled grid and Seller shall bear all costs for such tests and receive all revenues from the sale of such the Energy.

For all tests after COD, Seller and Buyer shall use commercially reasonable efforts to schedule such tests during periods in which Buyer has Scheduled the Unit to operate. If unable to be so scheduled, then the Energy produced by Seller shall be scheduled by Seller into the CAISO controlled grid and Seller shall bear all costs for such test and receive all revenues from the sale of such Energy and the hours of operation during such test shall not be counted towards the annual limits on operating hours that Buyer may Schedule.